Exhibit 3

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA, Plaintiff,	)
VS	) Case No. CJ-2017-816
(1) PURDUE PHARMA L.P.; (2) PURDUE PHARMA, INC.;/ (3) THE PURDUE FREDERICK COMPANY; (4) TEVA PHARMACEUTICALS USA, INC.; (5) CEPHALON, INC.; (6) JOHNSON & JOHNSON; (7) JANSSEN PHARMACEUTICALS, INC.; (8) ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (9) JANSSEN PHARMACEUTICA, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.; (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, f/k/a ACTAVIS, INC., f/k/a WATSON PHARMACEUTICALS, INC.; (11) WATSON LABORATORIES, INC.; (12) ACTAVIS LLC; AND (13) ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC., Defendants.	)

TRANSCRIPT OF MOTIONS HEARING
HAD ON THE 9TH DAY OF MAY, 2019,
BEFORE THE HONORABLE
THAD BALKMAN, DISTRICT JUDGE

REPORTED BY: Tanya Burcham, CSR, RPR

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

MS. ABBY DILLSAVER
ATTORNEY GENERAL'S OFFICE
313 NE 21ST STREET
OKLAHOMA CITY, OK 73105

MR. REGGIE WHITTEN
MR. MICHAEL BURRAGE
WHITTEN BURRAGE
512 NORTH BROADWAY AVENUE
SUITE 300
OKLAHOMA CITY, OK 73102

MR. BRAD BECKWORTH
MR. TREY DUCK
MR. DREW PATE
NIX PATTERSON & ROACH LLP
512 NORTH BROADWAY AVENUE
SUITE 200
OKLAHOMA CITY, OK 73102

MR. GLENN COFFEE
ATTORNEY AT LAW
915 NORTH ROBINSON AVENUE
OKLAHOMA CITY, OK 73102

ON BEHALF OF TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; ACTAVIS LLC; ACTAVIS PHARMA, INC.; AND WATSON LABORATORIES, INC.:

MR. ROBERT MCCAMPBELL
MR. NICHOLAS MERKLEY
ATTORNEYS AT LAW
ONE LEADERSHIP SQUARE
15TH FLOOR
211 NORTH ROBINSON
OKLAHOMA CITY, OK 73102

MR. HARVEY BARTLE IV
MORGAN, LEWIS & BOCKIUS LLP
1701 MARKET STREET
PHILADELPHIA, PA 19193-2921

ON BEHALF OF ORTHO McNEIL JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC.; JANSSEN PHARMACEUTICALS, INC.; AND JOHNSON & JOHNSON:

MR. LARRY OTTAWAY
MS. AMY SHERRY FISHER
ATTORNEYS AT LAW
201 ROBERT S. KERR AVENUE
SUITE 1200
OKLAHOMA CITY, OK 73102

MS. SABRINA H. STRONG
ATTORNEY AT LAW
400 SOUTH HOPE STREET
18TH FLOOR
LOS ANGELES, CA 90071

MR. JOHN SPARKS
ODOM, SPARKS & JONES PLLC
HIPOINT OFFICE BUILDING
2500 MCGEE DRIVE
SUITE 140
OKLAHOMA CITY, OK 73072

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EXBHIBITS

NO: **MARKED:**

PROCEEDINGS

THE COURT: I anticipate we'll take a 20-minute break sometime this morning when I realize Tanya needs a break and maybe we all do. I don't intend to take a lunch break since we have a hard stop at 2:00.

I would like to begin with the defendants' request for judicial notice this morning.

Mr. Merkley, are you going to argue that?

MR. MERKLEY: I think so, Judge.

THE COURT: I'll give you a full five-minute warning for 20 minutes. All right?

MR. MERKLEY: Judge, I know you read the briefs. This motion seeks a very simple ruling from the Court on a purely legal issue that's very important for this trial.

As I mentioned before, throughout this case, I and others have advised State's counsel that there would be a day when they had to set aside the rhetoric and the innuendo and come to this court of law and demonstrate to you as the presiding judge and the person in charge of making sure we all comply with the law, that the conduct they allege actually occurred in Oklahoma.

Now, Brad and Reggie like to poke fun at me and call me a book lawyer, all in good nature, of course. We get along well. This is one of those times when I have to be a book lawyer and ask the Court to recognize the law as clearly

defined by the United States Supreme Court.

So I'm asking the Court to formally recognize that any attempt by the State to rely on defendants' conduct, out-of-state conduct with no nexus to Oklahoma, nothing for distinction, to prove unlawful conduct under Oklahoma law would violate the Commerce Clause and Due Process Clause of the United States Constitution.

It's purely a matter of law with no consideration of fact necessary. All the disputes of fact between the parties, what conduct does or does not have a nexus to Oklahoma is irrelevant for purposes of this ruling. We're simply asking the Court to recognize that conduct having no nexus to Oklahoma would not give rise to liability under Oklahoma law.

So all the things the State says in its brief about testimony in this case, anything on this big pile of boards we have over here is wholly irrelevant to this particular motion. We're going to have a trial in this case for two to three months to convince this Court whether or not conduct did occur in Oklahoma. But for now, we're simply asking the Court to recognize the law as is.

As you'll see in the brief, Judge, the Commerce Clause will prove its reliance on out-of-state conduct with no nexus to Oklahoma to prove state law claims. United States Supreme Court has held, quote:

The Commerce Clause precludes the application of a

state statute to commerce that takes place wholly outside the State's borders, whether or not that commerce has any effect within the State. That's the *Healy* case.

Decades of Supreme Court precedent make clear that a state cannot penalize identity for out-of-state conduct having no nexus to the foreign state. Those cases are cited on pages 5 and 6 of our motion.

Now the State argues that well-established Supreme Court precedent is inapplicable because this is not a situation where a statute or a law is being challenged or where a state regulatory body is accused of trying to control conduct beyond the boundaries of the state. And, Judge, that argument is simply wrong.

First, there can be no legitimate dispute that the state is seeking to use our public nuisance statute to impose liability on the defendants for conduct occurring outside this state. It's alleged in the petition. It's been alleged in every brief filed, including the briefs that were argued to you last hearing. It's on the foam board example that Mr. Beckworth likes to show you every time with his modified jury instruction. It's the Oklahoma Public Nuisance Statute.

Imposing liability upon an entity for conduct occurring outside the state is regulating that conduct regardless of whether it's done in the form of a civil judgment for violating the statute or for a restriction or penalty

directly imposed by a statute. It's actually a matter the State cannot do indirectly through this Court what it can't do directly through a statute. So if out-of-state conduct has no nexus to Oklahoma, the State can't use it to impose liability on these defendants using Oklahoma's Public Nuisance Statute.

Also, Judge, as you see in the brief, the Due Process Clause for the reliance on the out-of-state conduct with no nexus to Oklahoma to prove state law claims. The Supreme Court's made clear that the application of state law and out-of-state conduct violates the Due Process Clause unless the out-of-state conduct has significant contacts within the state and implicates significant state interests. That's the *Phillips Petroleum* case.

The State doesn't dispute that the Supreme Court has held that states do not have the power to punish an entity for conduct that was lawful where it occurred and had no impact on the State and its residents. But the State -- in the next cite, the *BMW* case which we cite in our brief, but the State argues that that case should be distinguished because it only applies when the out-of-state conduct is being used to prove punitive damages. And the State is free to use that out-of-state conduct to establish liability including causation.

And, Judge, contrary to the State's assertion in that respect, *BMW* makes no such distinction. While punitive

damages is what was being addressed in the *BMW* case, there is no language in the holding that limits the holding to the punitive damages. And frankly, $4 million dollars in punitive damages as it was being dealt with in the *BMW* case, is even less material than billions of dollars the State is seeking here against only two of the very many opioid manufacturers.

The two unpublished, nonbinding cases that the State argues in support of its motion, cites in support of its motion that are in support of its brief, saying that out-of-state conduct can be used to prove causation are an absolute. First the *Hayes* case, that's the one the State primarily relies upon and heavily underlines and bolds that case. If you read the rest of the opinion, it actually supports the defendants' argument. The Court expressly acknowledged in the order that lawful out-of-state conduct, for it to be admissible under United States Supreme Court precedent, quote:

That conduct must have a nexus to the specific harm suffered by the plaintiff. Close quote.

And that's *Hayes* at page 2.

The *Markum* case did not involve any argument about out-of-state conduct having no nexus to Oklahoma. The Court just said:

Indicative of evidence both inside and outside of Oklahoma was admissible for liability issues aside from punitive damages. But in that case, it appears from the facts

that the in-state and out-of-state conduct both had some nexus to Oklahoma. And also if you look at the *Binding* case in the Tenth Circuit that the *Markum* case cites, that case didn't deal with the issue at all. So we're back with this motion, applies only to out-of-state conduct, having no nexus to Oklahoma and under established Supreme Court precedent, you cannot -- the State cannot hold the defense liable for conduct occurring outside the State's borders unless it has some nexus with Oklahoma.

Finally, the State argues -- or doesn't dispute that the Supreme Court's held in the context of the choice of the law analysis that the State must have significant contacts or significant aggregation contacts to the -- to the conduct at issue to ensure that the choice of law is not arbitrary or fair. The State acknowledges that and they cite the (indistinguishable) case which we cite. And then they try to distinguish it by saying that holding is inapplicable because there is no choice of law at issue here and everybody agrees Oklahoma law applies.

Again, the State's wrong. If the State is permitted to apply Oklahoma law to out-of-state conduct having no nexus to Oklahoma, there's clearly a choice of law at issue in this case. But the defendants dispute that Oklahoma law is the correct choice of law to apply in out-of-state conduct having no nexus to Oklahoma.

I want to close, Judge, with two examples that I think would bring the point home:

First, let's assume that California has experienced an increase in earthquake activity and California hires an anti-earthquake activist from New York to opine that oil and gas fracking is what's actually causing the increase in the California earthquake activity. So California decides to sue Continental Resources and Devon Energy, two large Oklahoma producers, for public nuisance, alleging that they are jointly and severally liable for the entirety of California's problem.

Now, let's assume that Continental and Devon both have assets in California but both deny that they've ever conducted any fracking activity in California. There may be a trial to determine whether either company ever fracked in California, but if they did not, the Constitution precludes California from holding Continental and Devon liable for conduct done in Oklahoma, Texas and other states. Such a lawsuit could constitute an unconstitutional attempt to regulate and punish activity conducted solely in other states.

The second example: Let's assume that Kansas experiences increases in marijuana-related crime since last year when Oklahoma legalized medical marijuana despite the OBN believing for many years, including still today, that marijuana has ruined more lives in Oklahoma than any other drug. So Kansas hires an antimarijuana activist from New York to opine

that Kansas's problem is caused by the increase in marijuana in Oklahoma. Kansas decides to sue two large medical manufacturers distributors from Oklahoma for public nuisance, alleging they are jointly and severally liable for the entirety of the Kansas problem. Those two distributors claim they haven't distributed medical marijuana to anyone in Kansas or anyone from Kansas, for that matter. There may be a trial to determine whether or not that's true, whether either distributed medical marijuana to anyone in or from Kansas. But if they did not, the Constitution precludes Kansas from holding them liable for conduct done solely in Oklahoma. That lawsuit would constitute an unconstitutional attempt to regulate and punish those distributors' activities conducted solely in Oklahoma.

So in closing, Judge, this motion seeks one very simple ruling on a purely legal basis. We're asking the Court to formally recognize that any attempt by the State to rely on evidence of defendants' out-of-state conduct with no nexus to Oklahoma to prove unlawful conduct under Oklahoma law, would violate the commerce and Due Process Clause of the United States Constitution. The request is supported by longstanding decisions of the United States Supreme Court, and we respectfully request that the Court follow that binding precedent and grant this motion.

THE COURT: Thank you, Mr. Merkley.

Mr. Beckworth?

MR. BECKWORTH: Good morning, Your Honor. Brad Beckworth for the State.

Your Honor, this shouldn't take too long. I don't know why Mr. Merkley doesn't like being a little bit of a book lawyer, I'm one. I think we all are. We have a lot of law in this case. I do for sure. One of the things about being a book lawyer is I am also a fact lawyer. Very -- this is very simple. Just -- you can put aside for a moment what the law is or isn't. What you've been asked to do is to issue an advisory opinion. And Mr. Merkley's examples -- and I'll get to why they're factually inappropriate, but if you just listen carefully to what he said, this is what he said:

Here is my fact pattern. If there were a trial and after that trial you found X, then we couldn't be held liable for Y. In both examples his main premise was "after a trial." So that's the whole point here. They are asking you to take notice of what the law is. Of course, we'll ask you to do that too and the law has on this issue or many others that are here, there's one part of law or an exception to the law or a part that brings another law into play. That's what trials are all about. If, after you get to the end, where you tell us all to stop or you've had enough, you're going to have to make decisions based on what you interpret the law to be and how the facts that apply to that law affect your ultimate

determination. We will put on evidence of these issues and others through the course of the trial. That's what it's all about.

But to take judicial notice of the law being something and then to try to say that all facts that might prove our case under what that law is should not be allowed at trial and we shouldn't be allowed to talk about them is completely inappropriate and can't be done. It's very important that you -- we connect the dots here.

This motion for judicial notice is about out-of-state conduct. They have a motion in limine, both defendants, about not letting us talk about their out-of-state conduct. So what they're trying to do is get you to say one thing about what the law is as an improper advisory opinion. And then to stifle us from talking about the very facts that would show that such conduct is, in fact, impermissible under the law at trial. It's a two-step process they're trying to do and neither one of them are appropriate.

On this -- the two examples that Mr. Merkley gave, I -- it's kind of funny that he's using a New York expert on this. I think he's talking about Dr. Kolodny in both examples. But both examples, the first one was fracking. What he said was that -- in his example, if there was conduct in Oklahoma by an Oklahoma company but there was no proof that the conduct actually took place in California or had any nexus to

California, then that conduct wouldn't be permissible to attach or be part of the liability decision.

Well, let's assume that's true for a moment. That's not going to be the case here. You've seen for two years all of the acts of Teva and I'll also throw J&J into it, have done locally in Oklahoma that were part of a national strategy. His other example was this marijuana one, again, saying that distributors in Oklahoma can't be held liable for conduct in Kansas if nothing that they did in Oklahoma had any nexus or impact to Kansas. Again, I don't know that that's the law, but let's just assume he's right for a second.

His whole hypothesis was that the evidence at trial was there was no nexus. That's not going to be the case here. I think it's really that simple. The case law that they cite, things like *BMW v. Gore* and many other cases in their brief, those go to issues where states are trying to regulate wholly through laws inconsistently out-of-state conduct. That's what that's about. That's not what's at issue here. Oklahoma has its nuisance law. It can apply that nuisance law. You can apply that nuisance law. Their argument would be like saying that in a car wreck case where it has a product liability aspect to it, that a car that's manufactured in Detroit, when it causes a wreck here due to -- and somebody dies due to products liability, we can't talk about the decisions that were made through the decision tree that led us to the problem that

occurred here in Oklahoma.

That's not the law. That's never the case. Judge Burrage and Mr. Whitten do, as do I, but they're probably the biggest guys in the state on insurance bad faith in this courtroom and others around the state. We look at the impact locally of decisions made by claims folks in the State of Oklahoma that are part of the bad faith decision tree that starts at State Farms headquarters or Farmers headquarters or whoever it is, they're all part of a national decision tree. That's just how the law works and we all understand that. But let's just get to the facts real briefly. And I'll do this one short because I think the motions in limine we'll talk about it a little bit more.

We've showed you an example of Teva, Your Honor, in our brief on this at page 3 of the testimony of John Hassler. He was the corporate designee that Teva put up, I think, 15 different dates. This was the question he was asked.

"QUESTION: That 2003 marketing plan and all of the marketing plans for Actiq, those are nationwide in scope, aren't they?

"ANSWER: Yes.

"QUESTION: They're not unique to any particular region or state?

"ANSWER: That's correct.

"QUESTION: So that's the marketing plan for every

state in the country, including Oklahoma. Right?

"ANSWER: Yes."

He was next asked in a different deposition.

"QUESTION: During the entire time that you sold the branded Fentora product, your company had a marketing strategy for that product. Correct?

"ANSWER: Yes.

"QUESTION: It was a nationwide marketing strategy?

"ANSWER: Yes.

"QUESTION: It included Oklahoma?

"ANSWER: Yes.

"Question: You understand that Janssen sold those opioids in Oklahoma just like it did in every other state in this country. Right?

This is a J&J rep.

"ANSWER: Yes, it did.

This is a J&J rep.

"QUESTION: One of the purposes in buying that data, talking about buying IMS data where they track prescribers, is to develop these call plans and list of doctors that you're going to call on. Right?

"ANSWER: Correct.

"QUESTION: Janssen buys that same data for the doctors in Oklahoma. Correct?

"ANSWER: Janssen buys that data nationally and that

would be included in Oklahoma, yes.

"QUESTION: It doesn't treat Oklahoma any different with respect to the data it gathers. Correct?

"ANSWER: Correct."

So we can go through this over and over with the defendants. What happened is very simple, they had a national strategy and they deployed it here. That's what happens in a lot of these types of cases.

With respect to Teva and Cephalon using -- let's use Actiq, for example. Let's not forget, Cephalon had a national strategy to illegally, not unlawfully, illegally get its sales reps to market its cancer drug off label for non-cancer uses. And they instructed them to try to entice doctors to do that. And they did it because the cancer market was too small. People died and they wanted to recruit new people to make more money. They pled guilty to a federal crime for that. They settled with the State of Oklahoma on a limited basis under false claims for that conduct that took place right here. It is the paradigm for the nexus of bad national marketing plans that occurred here.

The same thing happened with speaker (indistinguishable) for both of these defendants. They would have a national plan to use speakers. Then they would take that plan and go locally to their sales reps, recruit local doctors to be part of that speaker program locally. They would

also use national doctors to come in and be part of that locally. And all the companies did it. I can give you examples of that, CMEs, KOLs, whatever. You've seen it for two years and you're probably very aware of it. I know you're very aware of it. All of that was a localized way to deal with the national strategy.

Mr. Merkley is right. I like my boards. I'll give you two real quick ones. This is a board, Your Honor, that comes out of a book -- if I may approach -- it's called "Responsible Opioid Prescribing." This is a pretty egregious one. I'll tell you how this one worked.

So "Responsible Opioid Prescribing" was a book written by a guy that was very tied in with all of these defendants. And all of the different industry folks that were on the Pain Care Forum, some of them helped fund it. Purdue was a direct funder of this book. Cephalon, Teva's company, was a direct funder of this book. J&J with Robert Wood Johnson Foundation, I believe, was funding it, and the American Pain Foundation, which J&J labeled as go-to partner, as a third-party advocate. This book was sent out nationally as part of a national strategy. And one of the reasons it was done was to get local folks to believe certain things about opioids.

One of the things that is in the book is the use of pseudoaddiction, which we'll show is a lie, and this consensus

statement that some of these groups used. In Oklahoma alone, there were 6,000 copies that we could find that were disseminated here. We think Purdue alone sent 300,000 copies out nationally. That's the last evidence we saw. What is this right here? This was used to try to get people to understand what pseudoaddiction is. It's just unbelievable. Their behaviors on the one side that are less indicative of addiction and behaviors on the other that are more indicative of addiction. I've put people under oath on this and it's just unbelievable. What they were trying to do is get doctors. Pain care specialists, addiction specialists? No. Local GP's who don't have any training in addiction and confuse them that when people would come in asking for more opioids for them to believe that behavior that looked aberrant was really just a need to prescribe more drugs. And just look at a few of these. Like here's the lie.

If you went and did all of the things on the left, you might not be an addict, like hoarding medication, stealing someone else's pain medications, aggressively complaining to a doctor for more drugs, using more drugs than recommended, all of this kind of stuff. You know, that's not addictive, don't be worried about that. But if you go to the other side, you might be an addict. But it's not indicative of addiction, more addiction -- more of an addiction. Performing sex for drugs, i.e., prostitution. Performing sex for money to buy drugs.

Literally human trafficking, prostituting others for money to obtain drugs -- to obtain drugs. This was the kind of stuff that was addiction and they said it here 6,000 times. Why? Because they wanted people to believe that these drugs would not harm them. They wanted doctors to believe that they should prescribe more and more and more and people died from this right here.

Nexus, are you kidding me?

Now, the last we'll do this morning on this topic, this is a J&J one. But as I said, both of them filed a (indistinguishable) we'll get to in a minute. But we have these in our brief examples of both of these.

This is how this worked: This is a J&J national plan and look what's on here, a nonpersonal plan. KOL delivered digital tactics. WebMD, a website we've all been to. Nucynta.com. Self-guided details. Field-driven digital patterns. Webinars through coalition and clinician website. Direct mail. All of that --

THE REPORTER: Judge, I can't hear.

MR. BECKWORTH: I'm sorry. Am I going too fast?

THE REPORTER: I just can't hear across.

MR. BECKWORTH: I'm sorry. I was going to say, all of this stuff on this board are examples of the deployment of a national strategy using interstate commerce to get right here to Oklahoma.

And the last time I checked, we don't have a border wall around the State that keeps digital commerce in the mail from coming into this state. That would be great if we did. If we had a force field around the state that could have stopped all of their conduct from coming into the state, we wouldn't have a problem here. But that didn't happen. Instead, they preyed upon us, they preyed upon our doctors. We'll prove that at trial.

The bottom line is very simple. You cannot, you Honor, issue an advisory opinion. We will be put to the test, it's our burden to show, that these national strategies were part and parcel to a nexus to Oklahoma that, in fact, unreasonably interfered with the rights and health of others. And I think we will do that. But the time to make that decision will be when we rest, not to foreclose us from doing it now. Thank you.

THE COURT: Thank you, Mr. Beckworth.

Mr. Merkley?

MR. MERKLEY: Yes, Your Honor.

Well, not surprisingly, I didn't hear one, not one word about book law in that entire argument. Instead I heard something about under the guise of fact lawyer, I heard a bunch more rhetoric, accusations, and innuendos about the evidence. That reasonable opioid prescribing document you saw, Judge, that's not an accurate description of what the purpose was or

what its use was. Not at all. But there's no sense in us getting into that and spending -- I mean, I don't have the time to go through and explain all of that.

The point I made earlier, all of this information about -- from Mr. Beckworth about facts which are just accusations and rhetoric and innuendos are to distract. We're not here on this motion to talk about whether a nexus between Oklahoma actually exists. The main premise and what I've asked you to do is not an advisory opinion, it's to recognize the law as the United States Supreme Court has established it, that if there is no nexus to Oklahoma, there can be no liability under the Commerce and the Due Process Clause. That's all I'm asking you to do. It's not an advisory opinion. That's a judge of this Court acknowledging existing United Supreme Court precedent. We don't need, as Mr. Beckworth advocated, you don't need to hear at trial to make that determination. You know what the law is. We've cited it to you. We've provided it to you again. Frankly, there was no dispute to in Mr. Beckworth's presentation.

In my examples, I acknowledge that we may have a trial to determine whether that conduct happened in this case. We're going to have a trial to determine whether they can prove it, unless you exclude evidence on motions in limine or summary judgment. But the time for determining whether the nexus existed between the conduct they allege and the State of

Oklahoma is later. It's not what I'm asking to you do now. We simply want you to acknowledge the law as it stands. We'll get into all of the evidence later.

Responding to the car wreck example. On that example, the particular conduct and the faulty component that caused the accident in Oklahoma made its way into Oklahoma. There was a nexus right there and proof that that faulty component made its way into Oklahoma. These marketing plans that he discussed, we disagree with the State about what those plans say and what they mean, especially any implications of illegality. But we can all plan to do many things. But if we plan something and don't do it in Oklahoma, Oklahoma cannot hold us liable for it.

So in the end, Judge, again a very simple legal ruling. I'm not asking you to issue any advisory opinion, I'm not asking to you make any determination on the facts, I'm just asking you to recognize the law as the United States Supreme Court has determined it, that any attempt by the State to rely on evidence of defendants' out-of-state conduct with no nexus to Oklahoma to prove unlawful conduct under Oklahoma law, would violate the Commerce and Due Process Clause of the United States Constitution.

THE COURT: So Mr. Merkley, you know, I just listened to Mr. Beckworth who showed me the exhibits and the -- reflected the State's briefs. Unless I'm missing something, I

think they're -- I don't know that they're necessarily disagreeing. I think he's making a point that whether it's this book that was distributed 6,000 times in Oklahoma or websites, I think he's saying all of these -- all of those things had a nexus to Oklahoma.

MR. MERKLEY: And Mr. Beckworth has been saying stuff like that throughout the entirety of this case. Someday he'll have to come forward with actual evidence that that happened. He doesn't have a doctor to tell you they heard -- they saw or heard any of this alleged false marketing in Oklahoma. He doesn't have a patient to tell you that he experienced any problems with using our particular opioids in Oklahoma. He doesn't have evidence of stuff occurring in Oklahoma. But none of that's relevant for the purposes of what I'm asking you to do now.

And I think you're right, Mr. Beckworth does agree. So I think the Court should just go ahead and enter -- grant the motion and just formally recognize -- we'll deal with motions in limine, deal with summary judgment motions and deal with a trial later, but formally recognize that unless the State can prove that the conduct it alleges occurred in Oklahoma has a nexus to Oklahoma, it cannot hold the defendants liable under the United States Constitution.

THE COURT: So, for example, the Hassler deposition testimony, would it be your contention that his testimony that

this marketing, this nationwide marketing campaign was implemented in Oklahoma, would it be your contention that that's not showing a nexus to Oklahoma?

MR. MERKLEY: Absolutely, Judge. That marketing plan, there's nothing illegal or unlawful about that marketing plan he's asking about. That's the problem with relying on simply him telling you about a marketing plan and a, quote, deposition. John Hassler testified we have a national marketing plan. That doesn't establish that any unlawful marketing occurred inside the State of Oklahoma. I can say I have a national marketing plan, a national plan to do a number of things. That's a marketing plan. That marketing plan doesn't say -- and if he has evidence that that marketing plan is -- illegal activity is going to occur in Oklahoma and then he can show you the illegal activity occurred in Oklahoma, then he might meet his burden. In any event, it's irrelevant for the purposes of what I'm asking you to do today which is just recognize the law is what it is. Conduct having no nexus to Oklahoma cannot give rise to liability under the United States Constitution.

THE COURT: Okay. Thank you, Mr. Merkley.

MR. BECKWORTH: Do I need to respond?

THE COURT: If you want to.

MR. BECKWORTH: Do you want me to? Your Honor, just -- all I can say is that's the whole point of a trial. We

don't have a jury. But what would normally happen, as you know, is we all argue our case. There would be a jury charge conference and say, here is what the law is and then the jury would be asked to find if we proved up to that law. There's no difference here. They're asking for an advisory opinion. I think the law is what it is. No disrespect. I did talk about the law. The law that matters here is judicial notice and it's a proper issue of advisory opinion. But the Supreme Court has never said that you can't use evidence of out-of-state conduct to hold a defendant liable for conduct here in our state. That's not what the law states. Never. In any example.

What -- like, *BMW v. Gore* says in the State Farm case is, you can't hold a defendant liable on punitive damages, for example, for egregious conduct that occurred wholly out of the state. Like, so if you have 5,000 wrecks in other states, you have to focus on the wreck that happened in your state.

So -- but all of this, these national strategies will show they were absolutely designed and intended to cause an unreasonable interference with public health in Oklahoma. And they did. So let's not forget, this could be a summary judgment motion. At least with respect to Actiq, they pled guilty to very specific conduct that occurred here. I think it's wholly proper. I think we just go to trial; if Mr. Merkley is right, we will lose, because he says we don't have proof of anything.

MR. OTTAWAY: Your Honor, one correction for the record.

THE COURT: Sure.

MR. OTTAWAY: I'm looking at (indistinguishable) what Mr. Beckworth cited. And while Abbott Pharma and Pharma nondefendants in this case are listed as funders, Janssen and Johnson & Johnson, who are defendants in this case, are not listed as funders.

MR. BECKWORTH: What I said was the Robert Wood Johnson Foundation I believe was a funder, and also the American Pain Foundation. I don't think that's what I actually said.

MR. OTTAWAY: The Robert Wood Foundation is not listed either, but I'm --

MR. BECKWORTH: They were.

(Overlapping speaking.)

THE COURT: One at a time. One at a time.

MR. BECKWORTH: Yeah.

MR. OTTAWAY: Just pointing out, making sure the record is clear.

MR. BECKWORTH: Well, the record will be clear at trial. You're wrong.

MR. PATE: The record has had problems with your phone, Mr. Ottaway. I don't know if you got that fixed.

MR. OTTAWAY: That was actually Dave, not the phone.

The phone works fine.

MR. BECKWORTH: More evidence of why we need a trial.

THE COURT: I'm going to go ahead and take judicial notice of the fact that our Commerce Clause and Due Process Clause requires that you have to show some nexus to the conduct to prove any unlawful conduct under Oklahoma's Nuisance Law. Is that clear enough?

MR. MERKLEY: Yes. Assuming when you say some nexus, some nexus to Oklahoma is clear.

THE COURT: Yes. Yes.

MR. MERKLEY: Thank you.

THE COURT: Okay. Why don't we start with Teva's first motion in limine. I believe one of the components of that motion relates to out-of-state conduct. I know there's a number of things but that was one of them.

Mr. McCampbell, are you going to argue this one?

MR. MCCAMPBELL: No, sir. Before we start the individual motions in limine, I'd ask the Court to give me five minutes as an introduction to the motion in limine arguments.

THE COURT: Sure. And while I -- you know, we talked about this 20 minutes thing. I -- I read all of these and some of these, I thought, man, we should be able to plow through this in less than five minutes. And then I think there may be some that we may need to take the full 20 minutes and

maybe even more than that. So I'll be a little bit flexible and I'll certainly grant you a little extra time certainly for this first one to make overall introductory arguments.

MR. MCCAMPBELL: Thank you, Your Honor. And I'd agree with the Court, looking at the motions in limine, I think some of them can go very quickly, some are going to take more.

Before we start addressing the individual motions, I'd like to spend just a couple of minutes on a big picture issue that's going to go through all of the motions and -- and is going to go through trial. And it's this: Now I'm responding to -- in the briefing, the plaintiffs gave you an introduction to the brief. There is a common introduction to every motion. And reading that, I was struck that there's really a fundamental difference of opinion between the plaintiffs and the defendants about the process and what's going to happen. I'd like to spend just a couple of minutes on that.

THE COURT: Sure.

MR. MCCAMPBELL: And the difference of opinion is this, Your Honor. This trial, the plaintiffs brief you that these motions in limine aren't important and we can just skip through all of that and just have it all spill out in the courtroom at trial and just go forward and whatever it is, it is. I obviously disagree. And where the disagreement is, the big disagreement I think is, what's the purpose of a trial and

what's the purpose of this Court?

A trial in this court, the purpose is to determine justice between these parties based on this case, based on admissible evidence. And that's what we're asking you to do today. Let's go through the motions in limine and let's have a trial based on admissible evidence, based on the issues in this case before this Court. As I read the plaintiff's briefs, I see a different agenda about some sort of idea of generally educating the public, what they'd like to do about these defendants, and I submit that's not what this Court is about.

Now, the evidence will come in, the admissible evidence in this trial. The trial will be public, the public will have the access to that and we're not concerned about that. Indeed, we're going to have admissible evidence we will bring to this Court to show the Court that the plaintiff's allegations are not well-found -- well-founded. My point is, the process, the process should be on these issues. If I could approach the bench, Your Honor.

THE COURT: Yes, you may.

MR. MCCAMPBELL: I picked out three particular excerpts that illustrate my concern. Looking at excerpt number one from the common introduction they use, they say, well motions are not concerned about this fact-finder. To a large extent that's true. I mean we're arguing the motions in limine in front of you. We are concerned that this trial should not

be used in this Court. The prestige of this Court should not be used as a springboard to advance the plaintiff's agenda to affect opinions outside of this courtroom. The trial should be admissible evidence to affect your opinion about what the outcome will be.

Looking at number one, you say, well, I'm not concerned about this factor, this fact finder and they talk about the public eye. Well, the public eye certainly has -- the public certainly has the right to have an open trial on admissible evidence in this case. It should not be a general opportunity to generally educate the public on whatever agenda the plaintiffs wish to proceed.

Next, looking at the second excerpt here. The plaintiffs assert the defendants' concern it's not about the judge in this case but the exposure of prejudicial information to millions of Americans, including countless prospective jurors in hundreds of matters pending. That's accurate. We are concerned about that. We are not concerned about admissible evidence in this case coming before this Court. That's what the trial's going to be about. But I could not feel more strongly about this, Your Honor. This Court, this Court's authority, this Court's process should not be used as a platform to try to affect opinions for jurors, media members, whatever, that are outside this courtroom. This trial should be about the facts of this case and the chips will fall where

they may in a court of public opinion.

Last, item number three. They say, well, the Court ordered a televised trial. And for purposes of deciding motions in limine, the Court should not consider other states laws under the jurors hypothetical trials. Again, I have a difference of opinion. Because the trial's going to be televised, that's why it's extremely important that this Court maintain control of the courtroom, including enforcing the Oklahoma Rules of Evidence. That's what this trial should be about. So we believe these motions in limine are incredibly important.

First off, they can save a lot of time in a trial which is going to be too long anyway. The defendants are prejudiced if irrelevant and unfairly, prejudicial and inadmissible evidence is admitted, and I know the Court wants to avoid that.

So our request is that you will take these motions in limine seriously, which I know you will. You set aside a significant amount of time to hear that. Our request is that this trial would be conducted solely upon the issues in this case, before this Court, that are admissible under the Oklahoma Rules of Evidence. Thank you.

THE COURT: Thank you. And before I delve into them, I would just tell you a couple of things. One is, you're right, Mr. McCampbell, I find these motions to be a great help

and utility to the Court, because I do want to do all I can before the trial starts on May 28th, to make this a more streamlined process, if you can.

Absolutely I know there's going to be objections and I wouldn't expect any different. But to the extent we can at least narrow down some of the issues and take care of some of those things today and the days ahead, I'm all for that.

So when I was making my notes the last couple of days, I intended to make rulings on most of these but there's a couple I'll probably say, well, we'll address that at trial. But I do hope that at the end of this process today, both sides have a little more certainty as to what specific evidence will be and will not be admitted.

As far as the concern, I'm sure we'll get to spend a lot of time here in the next few minutes about this. But as far as the concern for other -- for the public, I know -- you know, there's been a lot said about the cameras and that's why we have the media order, and that's why we want to make sure that we do have good safeguards to prevent this trial from becoming anything other than a search for the truth and to allow the State to prosecute its case and the defendants to defend themselves.

I think that maybe cameras are a little bit different, but certainly I anticipate there will be a lot of members of the written press here that will, you know,

certainly be looking at this evidence and they will be disseminating it just as the television or other media-based reporters will be.

I think that's all I want to say just at the outset. But these motions in limine are advisory, and so if you don't like my opinions, I'm not going to hold it against you if you bring it up again at trial because that's precisely what they are, is advisory opinions.

So with that, I'm prepared to go to the -- Teva's the first one unless the State wanted to say something first like Mr. McCampbell did.

MR. BECKWORTH: For the record, your comments were well reasoned. We'll just address those in the course --

THE COURT: Sure.

MR. BECKWORTH: -- of responding, if that's okay with you.

THE COURT: Absolutely. Mr. Merkley, go ahead.

MR. MERKLEY: Your Honor, if I understood correctly, at this particular time, with respect to our first one, do you want to address the out-of-state conduct and not the --

THE COURT: Oh, no. We can address all of it. I just know that was one of several points in number one, as I recall.

MR. MERKLEY: Okay. So, Your Honor, the first motion in limine seeks to preclude the State from introducing

the State's Opioid Commission report. And I don't know if you want to take these one at a time, or if you want to take an argument on all, I think five or six of them at one time and hear from the State on all five or six of them.

THE COURT: Let's do it that way.

MR. MERKLEY: Okay. I'll try to get right to the point as we have limited time. On the State's Opioid Commission report, the first reason why we're asking the Court to exclude, it's not relevant. It's essentially a summary of the government's case prepared by the attorney general, plaintiff in this case, that even summarizes the opinion testimony of Dr. Andrew Kolodny, the State's star witness from New York.

It does not cite facts. It's a summary of what the State alleges in this case. It has no bearing itself on whether the defendants in this case caused a public nuisance. It is simply a cumulative summary of the government's case that it plans to bring to trial. But it's unfairly prejudicial to admit it, simply offered to skew the views of you, as the fact finder, base -- based upon what these commissioners and the attorney general have found, was unfounded; they just opined it based upon what they heard and the views particularly of the public by giving the appearance that this commission was a formal investigation done by the government, in conclusion that the government's case here is actually correct.

Importantly, Your Honor, it's without a doubt hearsay. It's undisputed that the State Opioids Commission report out-of-state -- out-of-court statements. It's undisputed in the brief that it's offered to prove the truth of the matter asserted. The State argues that it's not that it's subject to an exception of the hearsay rule. We completely disagree. The State argues that it's Section 28038, which allows the Court to provide an exception for factual findings resulting from an investigation made pursuant to authority granted by law.

But if you continue on to read the State statute, it says, the following are not within this exception to the hearsay rule. One of those is investigation reports prepared by or for a government, a public entity, or agency when offered by it in a case when it is a party. That clearly takes this particular State's Opioid Commission report outside of that exception to the hearsay rule. It's being offered by the State of Oklahoma in a case where it's a party.

The other example is factual findings resulting from a special investigation of a particular complaint, accident, or incident. That's what this is. The State's put -- is getting ready to file a lawsuit against many opioid manufacturers, puts together this commission and puts the forms and lots of opinions about what happened and then turns around and files a lawsuit.

And then the other matter which would exclude this is the other provision which says, any matter as to which the sources of information or other circumstances indicate lack of trustworthiness. And I'm going to get to that in a minute because that also applies to the President's Commission Report. I'm going to show you the law on how the Supreme Court said we should evaluate that. But I'm going to save that argument until we get through the President's Commission Report.

So it's hearsay. It's not subject to any exception. It's not relevant. And it would be unfairly prejudicial for you to allow it in. It's simply conclusions of the State supporting the State's case.

With respect to the President's Commission, same argument. It's not relevant. It's a national investigation done at the request of the president. It's a summary of what opinions those commissioners had. It simply cites to evidence, a lot of which cites documents, a lot of which the State plans to use in this case. So in that respect, it's simply cumulative. It's unfairly prejudicial to allow that particular evidence to come in and attempt to skew the views of you, as a fact finder, and the public that's going to be watching this on national TV, that there was some formal investigation done of the opioid problem; in particular that there was some formal investigation done of the problem here in Oklahoma.

The President's Commission doesn't mention what

happened specifically in Oklahoma. It doesn't make any findings specifically about the manufacturers that are left in this lawsuit. It's totally irrelevant to the State's public nuisance claim that it was bringing to trial this summer. It's also hearsay, out-of-court statement offer to prove the truth of the matter asserted. Again, the government argues that it's subject to 2803 as an exception.

I would say it -- it also involved, that exception does not apply because as I'll show you in a second, this is a situation where the information and the circumstances indicate a lack of -- lack of trustworthiness and should not be admitted in a court of law as evidence.

Your Honor, if I may approach, I want to hand you some exhibits.

THE COURT: Sure.

MR. MERKLEY: I'm going to hand them to you all at once like I did the other day.

I'll make Exhibit 1 the Oklahoma Opioid Commission report. Exhibit 2 will be the President's Opioid Commission report. Exhibit 3 will be the case of In Re: September 11th litigation, 621 F. Supp.2d 131 United States District Court for the Southern District of New York. Exhibit 4 is the Commission Charter for the President's Commission on Combating Drug Addiction and the Opioid Crisis.

So, Your Honor, before I move on from the charter,

one of the points -- the point I wanted to make in support of the charter is the presence of the Opioid Commission. It makes clear in paragraph 4 that the duties of the commission are solely advisory. The objective and the scope was simply to go through and put together the opinions of heads of other executive departments and agencies and other people on what the problem is. There was certainly no fact-finding, investigative mission for the Opioid Commission and -- as we'll get into the case law in a second on the September 11 case, that would indicate a lack of trustworthiness. And under the United States Supreme Court precedent, it means it's hearsay, it's not subject to exception.

So back to the September 11th case, 621 F. Supp.2d 131, beginning at page 154, which I have highlighted, Judge. If you can turn to page 20 of the Westlaw version I handed you.

THE COURT: I've got it.

MR. MERKLEY: The Court makes it clear if -- if the particular report is being argued to fit within this exception, and then states on page 4, circumstances indicate the government agency has functioned within its authorization and in a trustworthy and reliable manner, the law assumes admissibility but with ample provision for escape if sufficient negative factors are present.

And then it goes on to quote from the United States Supreme Court, that provision for escape is contained in the

final clause of the Rule. Evaluative reports are admissible unless the sources of information or other circumstances indicate lack of trustworthiness. The trustworthiness inquiry -- and not an arbitrary distinction between fact and opinion -- was the Committee's primary safeguard against the admission of unreliable evidence, and it is important to note that it applies to all elements of the report. Thus, a trial judge has discretion, and indeed the obligation, to exclude an entire report or portions thereof, whether narrow factual statements or broader conclusions, that she determines to be untrustworthy.

And then on the very next column, it notes -- the Advisory Committee notes, and I should say this is under the federal rules of evidence which is substantially the same as Oklahoma rule of evidence, the standards apply.

The Advisory Committee provides four non-exclusive factors upon which to determine trustworthiness: timeliness of the report, skill and experience of investigators, use of hearings, and signs of investigatory bias.

In each one of these commission reports, there are signs of bias. It's people putting together saying there's a real problem with opioids and we're going to find out who to blame. But importantly, what we want to focus on is the element of the use of hearings to establish that this is a trustworthy process. The Court goes on in -- on page 156 to

say, in this particular case, the commission heard from 160 witnesses, was free from bias and conducted public hearings that were the adequate equivalent of cross-examination in protecting the litigant's rights.

That didn't happen. There weren't -- there weren't interviews with witnesses. There weren't interviews with the defendants in this case. There's no indication of free-from-bias. There were no public hearing that provided the adequate equivalent of cross-examination to protect the defendants' rights.

If you turn to the next page on page 157. The highlight says that:

The Commissioners did not interview the terrorists in this particular instance for the September 11th case, did not make findings on the matter of their interrogations. The Commissioners asserted that their findings were reliable because they're made carefully and based on the substantial corroborative evidence. But that determination was made for the general -- for purpose of general education and not extend -- and may not extend to the evidentiary requirements of a trial.

And that's where we are here with both of these Opioid Commission reports -- reports. There was no witness interviews. The determination was made for general education and not subject to evidentiary requirements.

They're also prejudicial. If you notice on -- if you turn to the next column there, paragraph 18 under 403, the Court notes that:

The 9/11 Report, or large sections therein, cannot be admitted in full. Although specific statements may be relevant, useful, and admissible, admitting longer sections of the report would cause the trial digress into innumerable arguments relating to myriad issues, causing undue prejudice, extensive delay, and confusion. The imprimatur of the 9/11 commissions would extend to findings that were not fully tested and cannot adequately be rebutted.

That's the case we have here. Defendants weren't there. There was not an investigative process; there was not an evidentiary process; there was no potential for cross-examination. Objections would be difficult to argue and resolve. However valuable an account it is to government officials and the public, the 9/11 Report, here the opioid reports, in contrast to its specific findings, cannot be permitted to displace the time-tested search for truth by examination and cross-examination.

And then if you look -- the Court goes on to say in the next highlighted portion:

Admitting The 9/11 Report in bulk would choke the proceedings. Parties, if confronted by hearsay within a report admitted under this exception, have the right to impeach the

report. Inevitably, admitting any lengthy section of the report, a book brimming with findings and recommendations, and subjecting the many findings to impeaching arguments and evidence, would overwhelm the trial and affect it's fairness.

The Court goes on a few lines later to: Challenging even a single filing could implicate a panoply of documents and interviews. The same is true with respect to both of these Opioid Commission reports. For all the reasons I've advocated, they're not relevant, they're unfairly prejudicial. They are hearsay and not with an exception. And in particular, our state statute says that the State's Opioid Commission report is -- clearly is not within statute other -- within the exception. Because it says the government cannot use an investigative report that it prepared in a case offering -- offering evidence, itself.

Moving on to out-of-state conduct, Your Honor.

THE COURT: Yeah, I think I'd like to go ahead and hear from the State --

MR. MERKLEY: Okay.

THE COURT: -- on this -- on this specific issues of that --

MR. MERKLEY: That makes more sense to me.

THE COURT: Thank you.

MR. BECKWORTH: Just go through the ones that we've covered so far, Your Honor?

THE COURT: Yes. You can speak to the commission of the reports by the President's Commission and the Oklahoma Commission.

MR. BECKWORTH: Yes, Your Honor. Thank you. I'll also address Mr. McCampbell's earlier comments as well.

THE COURT: Okay.

MR. BECKWORTH: It kind of dovetails nicely into this.

One of the last things Mr. McCampbell said, and I wrote it down and I don't have the exact quote, but what I think he said was, you know, we're going to be prejudiced if you allow irrelevant, unduly prejudicial, and inadmissible evidence into evidence. Of course, if you do the wrong thing, that would be wrong. So that's a pretty straight statement. Right?

What the motions in limine are doing, though, is telling you to exclude now evidence that we will try to admit during trial. And one of the things that I find very interesting about these motions is that they're really just telling you to do your job, which we trust you will do.

But if you go back to his comments and you look at the briefs and why we started our briefs out with kind of the same thing in every one. I did that, Your Honor, because I didn't know which one you would read first. I hope we made it clear once you read them once you didn't read it again.

THE COURT: It made it nice that I could breeze through the first eight pages or so.

MR. BECKWORTH: Yes, sir. I know it was riveting and I'm sure you wanted to take notes.

But the point of it is, is we -- this concern they have, and Mr. McCampbell said it, he said, we're not concerned about you having or you doing the right thing or admissible evidence here. They are concerned about other trials and other forums. But that's not what's before you.

And I do find it troubling that all we want to do is arm you with the evidence and information you need to make the right decision. And what I think the defendants want to do is put that duty second. They don't necessarily want you to have all the information you need to make the right decision because they're worried that if you get that information, it might impact them somewhere else. But that's not our concern. I'm not representing another state. As I sit here today, I don't represent another state. We represent two Indian tribes, that's it, stuck in an MDL. We're not out trying to market and do other cases and, you know, whatever the public hears the public hears; the facts are the facts.

Our concern is that you are armed with the right information to do your job. And I think the other takeaway, before we get into the specifics is this: Since you are the fact-finder, as you know, motions in limine are largely

disfavored. They're actually -- the way this normally would work is, you know, there's evidence that they don't want a jury to hear because they can't unhear and they might not be able to follow instructions to disregard evidence. So you don't ever want them to hear it. What they've done, they've put all this at issue. They're literally telling you the evidence. Judge, here is the White House report. It says really bad things about us. Go read it and see what you think. But Judge, don't let them talk about the trial. They've put the stuff into issue now. You have read it. It just doesn't make sense. That's not what a motion in limine is about. So it just -- I understand the idea, and I respect it and we're going to do it on our side as well, that you wanted a trial to have order. You want it to move quickly. But at the same time, we need to get to the truth.

So let's go to the two that have been dealt with so far. I respectfully disagree with Mr. Merkley on the law. Let's talk about General Hunter's Opioid Commission report. The rule in Oklahoma, Your Honor, is 28038. I know you've read it, but let's go back through it because it answers the question.

And first, by the way, again, here we are having an evidentiary ruling and a motion in limine. But this is what the rule says and you know it:

To the extent not otherwise provided in this

paragraph -- and let's just stop there. That's not -- so this isn't the only way to get a document in. As you know, experts can rely upon hearsay as long as it's not violative of some other rule in their testimony. So we've got that over there on the side that wasn't mentioned.

But secondly: A record of a public officer agency setting forth its regularly conducted and regularly recorded activities or matters observed pursuant to a duty imposed by law and to which there was a duty to report.

Okay. Let's just stop there.

This document, the Oklahoma Opioid Commission final report is on all fours with all of those requirements.

There's a second deal that refers to or factual finding resulting from an investigation. That's different.

So we meet the main criteria of exception eight. Then you go into what Mr. Merkley's talked about. Well, there's some exceptions that even if you meet that rule, you might not be able to use the document.

One is an investigative report by police and other law enforcement personnel. It's not what this is. It's not an investigative report.

Two: An investigative report prepared by or for a government, public office or agency when offered by it in a case in which it is a party. This is not an investigative report. If you go back into the heart of the rule, it sets all

of the things that I led with and then separately there's a disjunctive or, or factual findings resulting from an investigation.

So we're not precluded by one of those exceptions. This is not a criminal case, so C doesn't prevent it. It's not a factual finding resulting from a special investigation on a particular case or incident or complaint. And it certainly is not a matter to which the sources of information or other circumstances indicate a lack of trustworthiness.

What it is, when you get to the bottom of it and I'll encourage you at some point, Your Honor, to look at pages 7, 8, and 9. This is the recommendations of this commission about what needs to be done as an initial step in abating the opioid crisis. This is a case about abatement.

These are the recommendations of public and private sector bipartisan folks, national experts and local law enforcement, attorney general, others, all called in to convene to do their job.

And yes, some of the folks that were involved, are involved in this case. You've heard me say it multiple times. When you have a case like this, the people that are involved in these matters want to be involved here because we're first and it's incredibly important. So we meet all of the criteria of that rule.

Now, I'll tell you one thing that's very troubling

to me. We did not file motions in limine because we think you can do your job and we know you will do your job. But what you haven't seen in this case is all the depositions they've taken. And when you look at their exhibit list, a lot of the stuff they've done at depositions is in there.

The heart of their case is to try to say that the State is at fault. We heard Mr. Brody, the last time he was here, refer to the State of Oklahoma, and I wrote it down, as a hypocrite. Those words. What they're trying to do is say that we're at fault, that we're contributorily negligent or we failed to mitigate damages. That's inappropriate under the law. There's no negligence claim. It's not what public nuisance is. So you can't talk about any failure on the part of the State. And there's no damages, so I don't see how you can talk about a failure to mitigate. We'll deal with that at trial.

If you hear the evidence, we'll move to exclude what's appropriate. You'll rule one way or the other. No matter what you do with that, at the end of the case, you will have heard their evidence through offers of proof, however you allow that to happen. There will be a closing argument about tying the law to the facts, what we think is and isn't appropriate, and you'll make a decision on that issue, for example.

But if they're going to be allowed to talk about

fault on behalf of the State and conduct of the State, saying the State didn't do enough or didn't do enough when, certainly the Opioid Commission report is highly relevant to that. Absolutely relevant.

And yeah, that might be a little prejudicial to them, but that's not the standard. It's unduly prejudicial weight against probative value. So I think this report comes in. I think they can cross-examine folks like Jessica Hawkins, Commissioner White. They're going to talk about what's in their abatement plan and how it relates to what happened here. So that's that.

The White House report is even easier. All of those exceptions that I just read, let's go back through a couple of them. The White House report is not an investigative report, and even if it were, it's not an investigative report prepared by or for a government when offered by, in this case, which is a party. So it's absolutely allowed under this exception on the rule against hearsay.

Now the reason that Mr. Merkley didn't -- I think the reason Mr. Merkley didn't talk about that exception is because he knows I'm right. I'm not going to presume that, but I just think that's why he didn't do it. So he went to the idea of untrustworthiness. I actually know a few of the folks that were on the commission. But the commission, to say that a commission chaired by the governor of New Jersey at the time,

the governor of Massachusetts at the time, the governor of North Carolina, who I know, Congressman Patrick Kennedy from Rhode Island, Attorney General Pam Bondi from Florida. We represented Florida in the BP litigation where General Bondi was our client. To say that they are all untrustworthy, the work that they did was untrustworthy, is troublesome to me. Professor Mattis, I don't know her, but I think she's the chair of Public Health and Addiction or director of it at Harvard.

To say that that type of commission is somehow untrustworthy and shouldn't be allowed to be talked about at trial is just inappropriate. This commission had a lot of different folks submit information to it. Some of our experts, some other folks are cited in it. There are tons of documents behind it. But what the commission ultimately did was look at what the root causes of the problem may be to understand how to fix them. There are pages upon pages of going to the president and saying, President Trump, in order to fix this crisis, we have to start doing these things. More work is needed, but we have to start here.

And our folks, when they talk about abatement -- look at this, Gary Medel, for example, submitted his own white paper to the Opioid Commission to be considered. All of that is part and parcel and is highly relevant to the abatement plan. But the fact findings of this commission are also absolutely relevant to what people believe were the root

causes.

And you've heard already today this idea that there's this national plan. Well, okay, let's just say it was a national -- this is all national conduct. The things that the White House commission talks about from a national perspective, they all happened here. Use of (indistinguishable) happened here. Use of CMEs and Speaker bureaus, happened here. Overly-aggressive promotion of opioids, happened here. Trying to say that addiction was one percent or less likely, happened here. So the relevance of this document is high. We don't have a jury. I think Your Honor can absolutely determine what weight to give this and what weight to give the Oklahoma Opioid Commission.

You know some of the folks. Some of the folks will be here at trial. If they don't like, for example, on the Opioid Commission, a statement, a recommendation, Commissioner White, for example, she'll be here. Talk to her. Jessica Hawkins, she will be here, so they can talk to her. So I think this is all about weight. It has nothing to do with admissibility, but certainly has nothing to do with the motion in limine motion at this time. Thank you.

THE COURT: Thank you. I'm going to -- I'll announce decisions when we get through the rest of the first motion -- the motion in limine.

So, Mr. Merkley, do you want to go ahead and talk

about the other components of that first motion?

MR. MERKLEY: Sure. May I have a minute or two to respond to Mr. Beckworth's comments first?

THE COURT: Sure.

MR. MERKLEY: This idea that I'm somehow referring to the commission of those reports as untrustworthy is beyond me. The Court knows that untrustworthiness is a legal term defined by the rules of evidence and then further defined by the United States Supreme Court. And under the legal term "untrustworthiness," these two reports are not trustworthy and cannot fall within this exception because there were no witness interviews or evidence to support the conclusions or findings of the commission.

The hearings: There were no hearings open to everyone for input from others, including the manufacturers. There was no potential for cross-examination, and there's no input in the reports from the manufacturers. The manufacturers, in particular these manufacturers involved in this case, aren't even referenced in those reports. So I didn't mean any personal attack on the untrustworthiness of those individuals. I think the Court knows that and I think Mr. Beckworth knew that before that comment. It's a legal term. The Court has to interpret the legal term and the case law from the United States Supreme Court on how we determine whether or not those instances are trustworthy enough to enter

them into evidence in this particular case.

The instance: The comment about whether the State is at fault. There are certain instances and -- throughout this trial where we, no doubt, will allege that the State had some role in what happened as far as what they allege. That's not what this report addresses.

This report is particularly the State's report and the President's report are summary reports prepared more recently looking overall at an opioid crisis and really providing a summary of the State's case. They don't directly relate to any of those instances where we will -- we will present evidence about what the State did or did not do; and in each one of those individual instances, the State can present in evidence to contradict what we say. They don't need a summary report, a biased-summary report of a State Opioid Commission to rebut those instances.

In response to Mr. Beckworth's reply to Mr. McCampbell's comments, I want to make sure we're clear. The State's going to get to use the evidence that's admissible in this case. We're seeking to exclude evidence that's not admissible in this case and we're focused on this case. Whether Mr. Beckworth represents other people across the country or not, there's no doubt, he made it clear, he wants to broadcast every piece of evidence he can find across the country to influence and will influence the opinions of

theories. It's going to be on national TV.

This case is going to be watched, it's going to be -- it's going to be evaluated by legal experts from some of these national networks as far as what comes in, what comes out, what's said in this trial, it's going to make national news. That's what he wants. He wants to broadcast this nationally. That's why we're focused on these motions in limine. We're not trying to keep anything out that is admissible, relevant and not unfairly prejudicial to this particular case.

One last thing. This is really important. Mr. Beckworth says that these reports fall under the first part of the 280.3 exception which are public records -- record of public offerings setting forth its regularly conducted and regularly recorded activities on matters observed by the duty imposed by law.

If I had known that -- it did not occur to me that Mr. Beckworth would even try to argue that because it's -- it can't be questioned that these are not regularly conducted and regularly recorded activities. These are once-in-a-lifetime Opioid Commission reports published by the State of Oklahoma and the United States Government. They're not a regular activity.

There is a whole line of case law on what is and is not a regular activity. I would have provided you with case

law on that if I had known that's what he intended to argue. This case fits within the second part which is the factual finding from a specific investigation made under an authority granted by law. And in that case, under State law, the State Opioid Commission clearly can't come in because it is being offered by the State in a case brought by the State. And both Opioid Commission reports fall within the untrustworthiness exception for the reasons I've stated earlier.

THE COURT: Thank you. You want to move on?

MR. MERKLEY: All right. Moving on to out-of-state conduct. I think that one is pretty easy, Your Honor. It's the same arguments we made on the motion for judicial notice.

The State's response was, it's the same arguments we made in response to the motion for judicial notice. So we think it's pretty much been decided that that motion should be granted.

Allegations of marketing activity, branded or unbranded should be excluded, unless there's no showing that the marketing materials or representations were distributed to the public in Oklahoma. Allegations of misrepresentation of any sort should be excluded, unless there's actual evidence showing those alleged misrepresentations were made in Oklahoma and relied upon by some person in the State of Oklahoma.

They don't have evidence of that. But before they offer that evidence to this Court at trial, they need to have

some sort of showing that this actually occurred in Oklahoma. So at this particular time, we would ask you to issue a motion -- issue an order excluding any evidence unless they can make a factual showing this occurred in Oklahoma.

THE COURT: Respond?

MR. BECKWORTH: Do you want to complete all of those? I wasn't sure.

MR. MERKLEY: I think we'll take them one at a time. I think that's better.

MR. BECKWORTH: We're doing out-of-state conduct?

MR. MERKLEY: Just out-of-state conduct at this time.

MR. BECKWORTH: We can make that quick. Your Honor, real quick on the Opioid Commissioner's Report. Mr. Merkley is wrong factually. They were both created for a specific purpose. Meaning they were -- when regularly conducted, they were regularly conducted meetings within the scope of what they were in the commission to do. That's all the law requires and that's what they are. They're not agencies that set up to last forever. So that's wrong.

We already argued the out-of-state conduct. I would just say that your prior ruling, which we agree with, makes this motion in limine have to fail. Because what they asked for and what you said was, if the law requires to have some nexus to the State, which we don't disagree and we'll show that

these national plans ultimately work their way into here, it was part and parcel of everything they did. Then we've got to prove that at trial.

Remember when I -- we argued about it earlier, I said, wait, it's just part of the motion in limine. What they're saying now is, you can't talk about them. You can't talk about the national plans. I don't know how I can show stuff happened in Oklahoma if it's part and parcel of the national strategy and marketing effort if we can't talk about it.

I'll show you one example that -- J&J has the same exact motion so we probably just -- I won't argue J&J. I can stand right here. This is a Duragesic sales memo. This is how this worked. When they would give statements to the national sales force, they called it the 275 Sales Force because at that time there were 275 reps nationally selling on Duragesic to healthcare providers. This is how it worked.

This is a national memo, national instruction pursuant to a national strategy that goes out to all of their sales force. That's just how it worked. So I would love to see the defendant's try to argue at trial -- and I think they're being very disingenuous to Your Honor to say that their national strategies were not intended to be deployed in the State of Oklahoma. All of their cooperate reps have said completely the opposite. When they show up here at trial, if

they do, I would be happy to ask that question in front of Your Honor. I will ask them, I will tell everybody, Did you plan for your national strategies to exempt Oklahoma?

And if they say yes, we wanted to exempt Oklahoma, then I think they'll have a perjury problem. We absolutely can and should be allowed to talk about this. And we have to be able to comply with the law. Thank you.

THE COURT: Thank you, Mr. Beckworth.

MR. MERKLEY: Back to the hearsay exception, Judge, because this may come up again in subsequent arguments. This is not, and I'm not wrong on the facts nor am I wrong on the law. Regularly conducted and regularly recorded activities and matters is not a one-time Opioid Commission report or any other commission report. And the case law defines that. If you want case law on that, I can get your case law on that. I had no idea he would even think to try to argue that. They're not regularly conducted activities by a state agency and they don't fall within that exception.

Second, back to the out-of-state conduct. I'm not asking for anything different than what I asked for earlier but what I am asking for on the motion in limine. This Court has already acknowledged that in order to find these defendants liable, you've got to show some nexus to Oklahoma for this out-of-state conduct. That's a given. That's a fact. That's a Supreme Court law. So what I'm asking the Court to do is

tell the State: You need to make -- and you can handle it however you want, obviously, but they have to make some sort of offer of proof, some sort of prima facia showing to you that this particular conduct they allege occurred in Oklahoma before they put it up in this courtroom and broadcast it to the world. Because it didn't happen in Oklahoma. We're going to maintain it didn't happen in Oklahoma. We've always maintained it didn't happen in Oklahoma.

This marketing strategy: Marketing strategies can be nationwide. But unless they show the conduct, this particular conduct, this false marketing conduct that they allege gave rise -- gives rise to Oklahoma, the liability in Oklahoma, they don't get to rely on that. They've got to show this happened in Oklahoma for this Court to hold these defendants liable in Oklahoma under Oklahoma's public nuisance statute. So for -- with respect to this particular motion in limine, the Court has to make them come forward with some sort of offer of proof in advance, some sort of prima facie showings that the conduct they're about to get into occurred in Oklahoma before they put it on the screen and put it on national TV.

THE COURT: Okay. Why don't you move on to --

MR. OTTAWAY: Your Honor, we have a similar motion. Do you want to hear that now?

THE COURT: Sure.

MR. OTTAWAY: I don't have much to offer on it. As

one of the two lawyers in the courtroom who will never be called a book lawyer, I won't mention the other one, our motion is a corollary, if you will. We cite some specific examples where the State isn't even attempting to relate conduct in Oklahoma references to the entire nation, not Oklahoma, fighting back.

This is a nationwide conspiracy. This is what I found from the Kentucky litigation: Different witnesses who talk about -- talking to sales reps, some not even for these defendants. In fact, one witness, not from me at all, that occurred at Georgetown or some other university or hospital, talking about taking the business model to Europe and doing the same thing there. Those are the kinds of things I think the Court should be very sensitive to when we get to this nexus in Oklahoma because I agree with Nick in this case about that. Oh, it's our motion number --

THE COURT: 12.

MR. OTTAWAY: -- 12. It's been briefed. I don't have anything more to say.

THE COURT: Thank you.

MR. MERKLEY: The next motion, Your Honor, is our motion to exclude the evidence of the allegedly false representations that were not identified in interrogatory responses. As the Court well knows by now, we made it clear that this didn't happen in Oklahoma. We've asked the State to

come forward with evidence on what allegedly false representations it believes were made in Oklahoma. We asked those specifically in interrogatories. The State did not disclose any. The State still cannot disclose any, but it certainly didn't disclose any in its interrogatories. And case law says that when you refuse to answer interrogatories, refuse to come forward with evidence once you've been asked for it, you can't later come back and offer that evidence at trial.

Specifically 12 O.S. Section 3237 E states:

If a party fails to serve answers to interrogatories submitted under section 3233, the Court with the action that's pending on the motion made by first orders in regard to that failure to adjust, among others, and may take any action authorized under certain paragraphs which include excluding the evidence.

In the case of *State Ex Rel. Protective Health Services v. Billings Fairchild Center, Incorporated*, Oklahoma Civil Court of Appeals case 158 P.3rd 484 at page 489. The Court says, quote:

Civil trials no longer are to be conducted in the dark. Discovery, consistent with recognized privileges, provides for the parties to obtain the fullest possible knowledge of the issues and facts before trial. The aim of these liberal discovery rules is to make a trial less a game of blind man's bluff and more a fair contest with the basic issues

and facts disclosed to the fullest practicable extent.

Close quote.

That's where we are, Judge. We asked for the evidence; they couldn't provide it. They still can't provide it. They shouldn't be allowed to hide behind the law and bring evidence to this Court, at trial, to the contrary.

Also the case of *McCormick v. Butterfly* (inaudible), that's 2010 Westlaw 141 0981 at page 3, that's a Northern District of Oklahoma case 2010, quote:

If the party fails to provide information in response to an interrogatory or a supplemental response, that party may not use such information at trial unless the failure was substantially justified or harmless, closed quote.

There's no substantial justification. The State believes it has evidence that the defendants made allegedly false representations which they should have disclosed in its interrogatory responses. It did not. It's not harmless. We have gone through the entire discovery period, deposed all of the witnesses in this case and we are weeks before trial. The State has not produced that evidence. The State should not be able to rely upon any such evidence if it hasn't.

THE COURT: Thank you, Mr. Merkley.

MR. BECKWORTH: Thank you, Your Honor. I know this shouldn't be very long.

We, as you know, appointed -- you appointed a

special discovery master and we've gone through quite a bit of hearings in front of Judge Hetherington as you admitted in my objections, Your Honor. Mr. Merkley might be right, if someone just doesn't answer. We have tons of objections to the way they asked the interrogatories in this case, about marshalling evidence and the way they were asked and how they tied to issues like reliance that, by the way, isn't part of the nuisance case and individual patients and individual doctors.

They didn't get these objections ruled on at all and that's their failure. So we have stood on our objections. There have been some that there have been motions to compel filed on; and to the extent that Judge Hetherington requires us to do some something different, we've complied. Sometimes we disagreed with that. Those were, at times, appealed to Your Honor. Sometimes you went with us; sometimes you went against us. We complied with those. So I'm not sure what this is about.

I will tell you that we've made it very clear in this case that we believe statements that are overstating the efficacy and benefits of these drugs and their propriety for certain times of ailments are misleading. Understating the risks and the problems associated with them are misleading. Understated addictions, misleading. It's pretty clear.

When -- I think you ruled against us on one issue where everybody on the defense side had deposed the State on

certain issues about false statements and then we had to go back and provide another witness on that.

One of the witnesses we produced a second time just for Teva was Dr. Kolodny. I was there for part of that. I think Dr. Kolodny testified for six hours, two full days. Mr. Bartle asked a lot of questions. He brought in binders upon binders of examples of the statements from the defendant's production that we have contended to be false. They asked about some of those; some of those they didn't. This is a case with 90 million pages of documents or more where we're not required to -- and we objected on this basis and others -- marshal all of our evidence to answer the interrogatory. They're not in the dark. They know exactly the kinds of statements that we believe are false and misleading. They had an opportunity to depose the State for -- so it's 12 hours, is that right? The second time, plus their part of the first time which I think was six hours that all the defendants participated in. A lot of information was provided.

So I -- this is a nonissue to us. There's no motion to compel order or sanction recommended by Judge Hetherington on anything. So I think any type of motion like this has been waived.

THE COURT: Okay.

MR. MERKLEY: First response to that, Your Honor. I don't think I have to file a motion to compel. The State can

argue if it wants. It has a particular allegedly false representation later that thinks it was encompassed within its discovery response, the interrogatory response, they can argue it. But the law says if you're asking an interrogatory about those allegedly false representations and you fail to provide them, you can't turn around and offer evidence at trial.

The next subject of our motion in limine. One, is evidence of statistics regarding opioid deaths from illegal drugs. And this is a very, very important one, Your Honor. The State attempts to take both legal and illegal drugs that have caused opioid overdose -- or that it caused an overdose and say the defendants are responsible for both of those. They improperly blame legal and illegal drugs, even though it's undisputed these manufacturers do not manufacturer illegal drugs, they do not distribute illegal drugs and they have no involvement whatsoever with the illegal drugs. And that's unfairly prejudicial, Your Honor, especially with a TV audience.

One, it inflates the alleged harm by incorporating statistics from illegal drugs for which the defendants cannot possibly be held liable. The State has no support for this idea that they're linked, other than rank stipulation by some of its witnesses. The State wants to say, well, yeah, but they all -- this illegal activity started with a legal prescription. That's just rank speculation that they can't support.

And three, and this is very important, Your Honor, this Court has consistently precluded us from obtaining patient level information that would contradict the State's evidence. We have been denied patient information and have no way of showing that a particular patient who overdosed on an illegal drug did not have a legal medicine manufactured by any one of these defendants prior to that, that would cause him or her to get hooked on opioids and then overdose on an illegal drug.

We've been denied that information. We have asked for it several times. We've made it clear from the beginning of this case. The State has always precluded us from having it. We brought it to this Court, to you and Judge Hetherington. We've been denied that information. If we don't have that information, the State can't turn around and say, oh, well, you're responsible for all of these illegal opioids, too, because they had to have started with a legal opioid.

When we don't have the ability and information to show, no, patients A through Z did not start with a legal opioid. And if I had that information, I could show you that and I could show you that at trial and to this national audience the State wants to broadcast us to. I can't do that.

And to that point, although this is a bench trial, a potential prejudice is nevertheless real because, again, not only do they not provide the information, but the information they do provide -- we got into this with Judge Hetherington the

other day -- you'll be seeing it on appeal and you've seen it in motions from the Janssen defense. Even the information that is provided is not adequately cross-walked so that we can show you from this overdose opioid database back to these other data bases which show individual medicines involving these defendants, that there's no connection between the manufacturers in this case or illegal medicines to illegal drugs.

And again, the point's been made several times, but due to the national television audience that's going to be watching this case, this is extremely prejudicial to allow the State to get up here and accuse these defendants of being responsible for illegal drug activities without any evidence to support it and without providing us the information, the evidence that we need to dispute it.

THE COURT: Thank you, Mr. Merkley.

MR. BECKWORTH: Your Honor, once again, every single argument is founded on a simple bedrock principle, this hypothetical public audience. They're not talking about what you need to make your decisions. They're talking about how they need to hide. And we'll talk about that in a little bit. But, you know, look -- I'll come back to this in just a second, Your Honor.

When we talk about this illegal drug, I'm not really sure what specifically they're talking about. There's two ways

you could skin that:

One is, do I take a prescription drug that wasn't prescribed to me? I think I'm hearing some of that. And then also what I think he's talking about is a type of drug that was never a prescription drug, like heroin or analog substances. So let's address both of these real quick.

On the prescription-type drugs that we have in the State, we allege an overprescribing problem. And part of that problem is that when you subscribe or prescribe 90 days for a toothache or you're too liberal on prescribing because of the conduct that we've had in this case, that you have an oversupply of pills. And like you've heard with our history experts that you allowed to testify last -- earlier this week, it's foreseeable that when you have an oversupply of these types of drugs, crime, diversion, addiction and a lot of harm result. So, of course, that should be allowed.

When you talk about drugs like that being evidence that a death is a death whether I got it, went to my doctor and took it or I stole it from my mom, either one of those is part of it. And you'll see and the evidence will be that many times, like with -- I won't use a name, but like one of the folks here today in the case, there are multiple opioids in the system when they died. That's part of the problem of addiction, an overdose. That's why we have an overdose problem.

When you talk about analog, like, Chinese fentanyl. One, we do not have the problem here. I think our experts will talk about that that a lot of other states have, yet. But when you look at things like heroin fentanyl, Dr. Kolodny talked about this, I think several experts will talk about this. I think as many as 80 percent of studies show of folks that are addicted to heroin, their first use was an opioid pain pill. They really do take you to that level. That's part of the problem with overprescribing. I think Commissioner White and Ms. Hawkins will both testify at trial that if we had an abatement order that literally said: No more opioids are allowed to treat anything starting today in the State of Oklahoma, for chronic pain, you would immediately have the beginning of a heroin epidemic, right? Because if you take these things away, people go through withdrawal and all the other problems that are associated. That's part of the problem. That's part of why we have to fix this, this entire crisis with a very carefully planned out abatement plan. So all of this evidence is a part of it. It is a problem that was created by their conduct.

Also, you know, one of the things that we keep hearing and they just haven't -- they just can't get their hands around it. And the public nuisance abatement case, I've argued this many times, there's no issue of reliance on there. That's not the case. As you held the other day, it's an

unreasonable interference with the right of many. Let me just say this, it just crossed my mind:

This is a statement by Teva's CEO. And all we've heard Mr. Merkley talk about -- I'll just stand right here -- about is this idea that we've got to worry about the public. So this was -- you know, we've -- we've been dealing with this case for a long time. Right here, the other day, the CEO, he's -- their headquarters, he gave the following statement. Mr. Whitten called us the other day and said they talked about us being ambulance chasers. Look what he says:

Mr. Schultz said it would, quote, be very strange to do anything with settlement when you have done absolutely nothing wrong. And he gave quite a lengthy statement to the Financial Times about how all these cases are bogus and it's just a bunch of ambulance chasers. Now, that's not about this case in Oklahoma. That's the CEO trying to save his skin because they have analysts watching what's going to happen. And he has made direct response to this case in the Financial Times and told the world, We did absolutely nothing wrong.

Now, I do represent security shareholders, including quite a few pension funds here in Oklahoma, and we'll see what happens with their stock price. But I'm pretty sure when you're CEO you can't lie. And I'm also pretty sure when you're CEO you can't forget that you bought a company that pled guilty to a federal crime. So let's just -- you know, I don't really

have anything to do with the merits of motion in limine here about what Your Honor has to decide. But if we're going to talk about the hypothetical public that they don't want to hear about, then don't make statements like that. And you shouldn't, if you're a lawyer for J&J, go to NPR and say that the State of Oklahoma's claims, and I quote, are baseless. If you don't want the public to hear about the stuff, don't talk about it. But that's what's happened.

But in any event, none of that matters. The only thing that should matter in this case is whether evidence is somehow so improper that it should never get to Your Honor. And the mere fact that we keep discussing that is in front of Your Honor, kind of shows it is irrelevant -- the arguments are irrelevant.

THE COURT: Thank you, Mr. Beckworth. You provided a good segue. After we get through this and a break, we'll take up Janssen, No. 1. Talking about it already kind of. Let's get through this one first.

MR. MERKLEY: Mr. Beckworth's right, Your Honor. I do intend for my motion to apply to illegal activity in both contexts he mentioned.

The point is, there's no link to the problem caused to this illegal drug and the problems that result from these illegal drugs to any legal activity, any legal distribution of these legal medicines, and the defendant cannot be held liable

for someone else's purely illegal conduct. Again, the status that he references from Dr. Kolodny's rank speculation and Your Honor and this Court has precluded us from having -- and the State, at the State's request, has precluded us from having access to the individual patient's information so we can show the Court that the State's wrong in this instance.

In that instance, it's unfair, to say the least, to allow the State to -- and unconstitutional -- to allow the State to establish liability based on purely illegal conduct without allowing us the evidence to show there's no connection between that and our -- our medicines.

The next one's essentially the same argument, Your Honor. It references to opioids as a gateway to heroin and other illegal drugs. Again, there's no support for that. That's just rhetoric, designed for a TV audience. And I want to go back to the TV audience part.

We're not trying to keep -- and Mr. Beckworth keeps going to this and saying it's all about the TV audience. We're not trying to keep admissible evidence out of the public's view. The Court said we're going to put this on TV, we're going to put it on TV. We're trying to keep inadmissible evidence out of the public view. That's the whole point of these motions. So that's -- response to -- it should take care of that. I hope we don't have to hear that argument every time he stands back up. Because that's the point. It's

inadmissible evidence that we're trying to keep out of the public's view.

Again, in reference to opioids as a gateway to heroin, there's no support for that. That's, again, the State trying to improperly inflate legal and illegal drugs. It's unfairly prejudicial to us, especially with a TV audience. It allows the State to improperly inflate its statistics on overdose deaths, or overdose deaths or opioids problems by trying to equate FDA-approved medicines properly prescribed by physicians and heroin.

The State has no support for this other than the rank speculation of Dr. Kolodny and others. It should be excluded.

MR. OTTAWAY: Do you want me to go now, Brad?

MR. BECKWORTH: Sure.

MR. OTTAWAY: I don't care. My experience is the closer we get to trial, the more we get into the detail and the actual evidence. So I was interested in what Brad had to offer when he was talking about illicit drugs.

Take, for example, the 80 percent of people who start on heroin, start on prescription opioids. Take that as a fact for purposes of my argument here. What do we do with the other 20 percent? Is it the State's now concession that that other 20 percent is not part of what you're seeking in recovery? Because it gets very technical when we get into some

of these death statistics. If you're talking about deaths related or that have opioids in their system when they die, that may be the result of taking methamphetamine which has been cut with opioids and sold illegally. It doesn't have anything to do with either. It shows up as an opioid death. So the details are really going to matter. It would be nice if we knew the extent to which.

If the State claims you're responsible for every death caused by an illicit drug or whatever kind, then they ought to say it. If they're excluding some, let's hear it. That would be important, I think, for Your Honor to know.

MR. BECKWORTH: Well, Mr. Ottaway makes a great point, Your Honor, because it's indivisible to the case. And we've alleged this displeasure and our witnesses state all the time, Your Honor, it's multifaceted to this problem and it's drug dealers, and it's China, and it's bad doctors, it's this, it's that. The one thing they always absolutely are consistent about in saying, but it wasn't us. We're zero, zero percent at fault. So you had a scheduling order that said bring in third parties by this date and if you don't, you don't. They didn't. That's a problem for them.

Secondly to Mr. Ottaway's point, we've been over this nuisance statute a lot. I don't see any of that stuff in there. It's not. It's not what a nuisance is about. If you caused the crisis, you caused the crisis. It's an indivisible

case. Again, they can come back in a joint and several contribution case, if you find our my favor, they can go after anybody that they think they can prove their case is about. They are going to have a hard time doing that against one another because they've worked together and they always used to blame (indistinguishable).

Now, on the gateway issue, which also goes back to Mr. Ottaway's point and Mr. Merkley, Judge, I don't have a copy of this, I'll just show it to you. This is Exhibit 75 from the deposition of Phil Cramer, and it is a document with a Bates stamp of PBD 8901541900.

This is a page from a report that McKinsey & Company gave to Purdue. Now, McKinsey is an advisor consultant to drug companies including J&J, Watson (indistinguishable) we'll get to show you at trial when we get to the facts. But here's what it says: Growing Opioid Abuse Epidemic, this is in bold. Pain relievers are second only to marijuana as, and I quote, a major gateway drug for youth. Pain relievers are second to marijuana as first illicit drug used. Youth pain reliever initiation rate nearly match older ages. OxyContin initiatives are starting at a younger age. Young users have a network of suppliers for pain relievers.

And it's really interesting. 21 percent, it shows are from one doctor. 46 percent comes free from a friend or relative. 14 percent are bought from a friend or a dealer. So

the idea that pain relievers are a gateway drug, that's not our idea. That's just what it is. And an industry consultant is who they all like or trusted and paid handsomely said so. So does the CDC. But it won't be me testifying or Mr. Whitten or Mr. Burrage, or Mrs. (indistinguishable). It's going to be the State's experts on this, and the facts will be what they will be. So I don't think it's really in dispute that these drugs are a gateway drug.

I also don't think it's in dispute that Oklahoma has a terrible problem with youth-drug abuse and addiction. I mean I think we're in the Top 10 nationally, if I'm -- if I remember that right, in that category, in the 12 to 17 age. It's terrible. So is it a gateway drug? I think so, but that's something we will have to prove at trial.

THE COURT: Mr. Merkley?

MR. MERKLEY: Lastly, Your Honor, we have our motion to exclude evidence of hearsay statements of alleged co-conspirators.

First of all, any evidence of a conspiracy is just frankly not relevant to this particular case based on public nuisance and whether these defendants caused a nuisance in Oklahoma. But in any event, it's clearly hearsay. The State must affirmatively show that the statement meets the co-conspirator exception by demonstrating that it was made during a conspiracy and in furtherance of a conspiracy. Again,

although this is a bench trial, there's going to be a national audience watching. It will be unfairly prejudicial to allow and dispute. Admit evidence of an alleged conspiracy without making an affirmative showing to this Court that this conspiracy is relevant and that it -- that it can meet the hearsay exception for statements of the co-conspirator. The State simply argues it's too early and any hearsay exception to comply. We're simply asking the Court to enter an order saying no evidence of alleged conspiracy will be admitted unless an exception is established on hand.

THE COURT: Thank you.

MR. BECKWORTH: Your Honor, of course that's not the law. But if it were, it's awesome because I will be able to show a trial of documents from J&J where they refer to Purdue and that's really what we were talking about as a partner, partners at the table, they actually had (indistinguishable) agreements. So I don't think that will be a hard predicate to lay. And with respect to Teva, they were so addicted to the OxyContin train, when they lost their patents cases, they cut a deal to distribute Oxy that they bought from J&J, and from Purdue, paid Purdue royalties on the sales and Purdue paid Teva's -- paid their own sales reps to -- bonuses based on sales of Teva.

And oh, I -- when I think he said, we don't have any evidence, we haven't tried our case yet, but we're pretty good

at pulling up whatever they ask us about, there is this issue that Noramco supplied the Oxy to Purdue and also that Teva -- Oxy that Purdue makes Teva sold. So if we had to lay a predicate, we could do that. But we don't have to because we have deposition testimony of Purdue and, of course, they were there and all these codefendants under their co-defense agreement were there and had a full and fair opportunity to question Purdue in those instances.

We have subpoenaed Purdue, both as a corporation and as a -- certain individuals. We're not sure whether they'll comply or not -- actually, I'm working on that right now. But if they don't comply with the subpoenas, then the depositions would be available because there would be unavailable witnesses. And then with respect to their documents, conspirator or not, if they are business records, they're admissible and we have a ton of business records from Purdue.

And then you have the residual catchall exception in Oklahoma as just another example why these things would be admissible when you look at their trustworthiness and the circumstances. It would be kind of silly that a document that -- absolutely would be okay if a defendant, who they all worked together with to defend this case and worked together with -- in business, their statements would be admissible. And then because they settled, they lose all their trustworthiness and shouldn't be allowed under the residual catchall provision,

you know, that's just not how the law works. So fortunately, the rules are pretty clear and I think all -- for all of those reasons and many others, we will be able to put on Purdue evidence at trial.

Now with respect to maybe they're talking about other statements as well, like Endo and others. To the extent that they worked with industry partners who are in different organizations, like, Pain Care Forum and others, of course those statements would be fair game. We also have documents that we got from quite a bit of these third-party advocates, American Pain Foundation or others that have been produced to the defendant. Those are business records and fairly admissible. So, you know, whether we have to lay a predicate or not is beside the point. There's plenty of exceptions to the rule that make these allowable. Thank you.

MR. OTTAWAY: Judge, I think we've been at this for some time. I think the reporter's desperate for a break, at least I'm desperate for a break. I'm not --

THE COURT: We're going to stop right after we get done with this one.

MR. MERKLEY: I just have a couple of sentences.

THE COURT: Sure.

MR. MERKLEY: The rhetoric, accusations, innuendo, Judge, again, all we're saying is conspiracy is not relevant. We completely disagree that Mr. Beckworth shouldn't have to lay

a predicate that the exception to the hearsay rule applies before he can admit the evidence he should. We would ask the Court to require him to do so, and that's all we're asking. Before he comes into court in front of Your Honor and an actual TV audience alleging a conspiracy and seeking to admit statements of alleged co-conspirators -- co-conspirators, he needs to establish that it's not hearsay and it's relevant.

THE COURT: I'll start in reverse order. I'm going to deny the request to exclude -- to keep out the hearsay statements and co-conspirators; however, I will require the State to lay a predicate with regards to admissibility under hearsay. I'm just not going to blanket exclude those statements.

With regards to references to opioids as gateway drugs, I'm denying the motion.

With regards to the statistics, including illicit drugs, I'm going to deny the motion.

With regards to the false representations not identified in the interrogatory responses, I'm denying that as well.

The additional notice of defendants' out-of-state conduct, I'm denying that. However, I'll just say the reason I'm denying that is not because I believe that the Constitution requires that there be a nexus as we've talked about earlier, however, I don't think it's -- I'm not going to add another

step for the -- requiring the State to show prima facie evidence before seeking to introduce that -- any of those types of statements.

Finally, with regards to the two reports. The State's Opioid Commission, the President's Commission, I believe those are relevant and I believe they survive the challenges that the defendants have put forward and, therefore, I'm denying the motion.

Let's take a break until 11:25. And then we'll move on. We'll take up Janssen's first motion in limine.

MR. BECKWORTH: Thank you, Your Honor

(Following the recess, proceedings resumed as follows:)

THE COURT: Mr. Ottaway, you're recognized.

MR. OTTAWAY: I'm confident that I'm going to win this motion in limine because I can't imagine the Court overruling a motion in limine that seeks to keep inflammatory statements out of your court. But as I indicated with the book and with that last 20 percent, the closer we get to trial, the more details matter. And the Devil is in the details on this one. So it's more to lay down parameters and maybe the Court can give us some guidance on where we go so we're not constantly standing up and making this same objection. There is no question that this is an important topic for the reasons the Court has already noted. We are not just in front of you but in front of the public as a whole. We're not trying to

hide anything here, we're trying to keep inflammatory statements out of the record.

As I said, though, the Devil is in the detail, and what is an inflammatory statement. We'd like to get some guidance from the Court on that. This ruling that the Court made, for example, on the President's Commission Report has some language in it that we believe can be excised without hurting the plaintiff's. An example is right there at the top: Terrorist organization. I've put some examples up from hearings, things that have been said, carting the bodies away in body bags, more people killed than the Vietnam War, Mother Teresa, herself, would become an addict.

In the petition itself, depraved criminals. Your Honor has already heard me on the Opioid Kingpin and there's an interesting corollary to that, here, in just a minute. But the opioid mafia is another one that comes in. The reason I think the opioid kingpin is interesting is because I discovered this the other day. There's a new suit or actually an amended complaint, 250-page amended complaint. Apparently this catches on. There is more than one kingpin because in that case, the allegation is that the DEA-labeled nondefendant in this case, Mallinckrodt, a kingpin, because it shipped pills to pharmacies that were pill mills. So we concede that language had an impact. And all we're asking is that we keep it out of this case. I don't mind arguing the facts with these fellows.

We're going to disagree about the facts. We're going to disagree about the law, what's the effect of the State, (indistinguishable) is it not a defense in the public nuisance case. One of the things we shouldn't be arguing about is whether we're going to let inflammatory statements be in the record.

First, it's not relevant. It doesn't have anything to do with the merits of the case. It is designed to illicit an emotional response. There is evidence which is persuasive and there is evidence which is not persuasive; it is only argumentative and inflammatory. The rules provide that the Court should be the watchdog on that, but we believe that in this case, the Court is going to have to be particularly vigilant. We've given you some cases under the Rules of 2403. It clearly applies in our case, even though it's a bench trial.

Allowing inflammatory statements and our required response to them is a waste of time and the case is already going to take, according to the plaintiff's, two months. And the State doesn't really argue why these are admissible or should be allowed, other than the kingpin argument which you allowed Dr. Kolodny to use as an expert opinion, why we should get into the opioid mafia, the terrorist, Vietnam War, Mother Teresa, etcetera. And even the kingpin is a suspect now that it's being picked up other places. So we want you to bar all of us from making inflammatory statements, to be cognizant that

when they come up, if they come up, they should be dealt with quickly. And that's all I have on our motion in limine, No. 1.

THE COURT: Okay. Mr. Whitten?

MR. WHITTEN: Good morning, Your Honor. So --

MR. OTTAWAY: He is the other nonbook lawyer.

MR. WHITTEN: You know, you say I don't know one time and it just follows you the rest of your life.

MR. OTTAWAY: You can't get away from it.

MR. WHITTEN: But you know, I'll start with that. Larry, that's inflammatory.

MR. OTTAWAY: It is. And I would never say it in the public.

MR. WHITTEN: I'm going to have to repeat a few things that were already said here this morning, but I will try to be brief. I can't cite you the case because I don't know the law. But you are familiar with the famous quote about pornography where one of the U.S. Supreme Court judges said:

I don't know what it is but I'll know it when I see it. I hope I'm close on that quote.

You know, what is an inflammatory statement? Was what Larry said about me inflammatory? What is an inflammatory statement?

One man's trash might be another man's treasure, and one man's inflammatory statement might be to another person just for truth. So I'll start with this, Your Honor.

Motions in limine are not -- are not universally helpful in a bench trial. So really, normally, you would be worried about making an inflammatory comment, that is not appropriate, or an inflammatory statement that is not appropriate and the jury hears it and you can't un-ring the bell. But that's not the case with Your Honor. So what they're trying to do is handcuff us inappropriately. And you know, I kind of resent that. We've tried a few lawsuits and we've been around the block. This is not our first rodeo. We're not going to introduce anything in our humble opinion that isn't legitimate. But they're just trying to tie our hands.

And then it becomes a game of gotcha, where if we end up during the trial introducing something that we think definitely is appropriate, then they stand up and say: Judge, that violates the -- remember you ruled they can't say anything inflammatory. So it becomes a game of gotcha. The law in Oklahoma is that motions in limine are not favored. Period. This is in our brief. The people moving for motion in limine have a heavy burden. It's their burden. And you know, the law also is that relevant evidence is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action, more probable or less probable than it would be without the evidence. It is also the law that courts are reluctant to enter pretrial

rulings which broadly exclude evidence. This is about as broad as you can get, unless it is clear to the judge, it would be inadmissible on all potential grounds.

So you know, I don't want to go through each one of these one by one, but we're going to have a basis for introducing anything that we talk about during the trial. And the way it's supposed to work is there's no jury here. You're the judge and they can make an objection then; and if you sustain it, fair enough. You're not going to rely upon it if you were to issue a ruling later. That's how it should work.

But like, for example, the terrorist and 175 deaths, that's a quote out of the White House report. We didn't say it. It's in the White House report. So you should wait until we introduce the White House report and see why we're introducing it then, who we're introducing it through. That decision really hasn't even been made. I'm going to guess we'll probably do it through an expert witness like Dr. Kolodny. But that would be the best time for you to decide and have really good lawyers like Larry come up and say, Judge, we object to that White House report because of this reason. And have a good reason. Not some blanket broad objection before the trial even starts, like it's inflammatory.

On the Mother Theresa thing, you know I hang around with -- I'm not Catholic but I hang around with Sister Rosemary (indistinguishable) from Uganda. And I've spent a lot of time

with her, but she's not that well known. Mother Teresa is, she's no longer with us. But the example of Mother Teresa was used because she was universally regarded as someone with high morals. It's just an analogy. That's all it is.

The testimony from Dr. Kolodny was that, if you give -- if you give Mother Teresa opioids long enough, she too would get addicted. That's what we're talking about here. And it's just an analogy. She's not even alive any more. You can't give her opioids. It's just an analogy. But nonetheless, they should deal with that at the time of trial.

I could argue that many of the statements that have been made about my friend Nick here this morning, who, by the way, I have never said you were a book lawyer. I don't know what you're talking about. But many of the statements Nick has made today I could theoretically say, shoot, that's inflammatory. You're saying our claims are baseless and things like that? That's inflammatory. Well, it might be to someone. It's not to me. It's wrong, but it's not inflammatory.

THE COURT: Mr. Whitten, I think what I hear from defendants, at least this is what I got out of reading the briefs, is that because there will be citizens and reporters, that once the State even mentions these words, even if the defendants were to make an objection up here at a bench conference, then that bell has been rung, so to speak. That's a fair concern. Even -- even if it's not -- if I determine

it's not admissible, even if it's just uttered in the presence of the world watching, that -- I think that's their -- their concern is that the -- they think there's damage done.

MR. WHITTEN: Well, let's talk about that. Good point. The White House report is already out there. Not only did the White House issue it but it's been on the media, all over the place. So we didn't put it out there. So these alleged inflammatory things, the quote about Mother Teresa, it's been on television several times. I've seen Dr. Kolodny and others talk about it because it's a commonly-used metaphor. It's even in the film I helped produce, Killing Pain. We talk about that same metaphor, that same analogy.

But these things are already out there. But Judge, look, then it really come down to this. I don't introduce testimony or documents by evaluating whether they're inflammatory or not. I've never done that in my career. I've never had a court do a motion in limine like this. We have -- we follow the rules of evidence. And you know, if the statement was found to be inflammatory, that alone doesn't mean it's not admissible. For example, what if we were trying a murder case? I mean, murdering someone you could argue is inflammatory. But if that's what the case is about, that's what the case is about. If the shoe fits, you know, wear it. So I don't recall the word inflammatory being in the evidence code. If it is, I don't remember. 2403 would probably be the

closest thing to it. It's more prejudicial than probative. And all I'm saying is, don't handcuff us with a broad ruling before the trial even starts. We're going to have a basis for everything we introduce. There's a basis for every one of those, including, like -- I haven't talked about the Vietnam War, but, Judge, my recollection is that has been all over the news, that we're losing more people to drug overdoses in one year than we've lost in the entire, I think, 15 years or so of Vietnam War. That's already out there and that's an appropriate analogy. It's already out there.

But look, first you ought to wait until we move to admit it or talk about it and then we have fine lawyers here. They can approach the bench and argue about it. But don't handcuff us and say, you guys can't do anything, that's inflammatory, before the trial starts. That's way too broad. We're certainly, I can assure the Court as an officer of the Court, and I've been practicing in front of you for a long time, I'm not going to try to introduce something solely because it's inflammatory. I am going to try to introduce evidence that I think is relevant and important to our case. And if, by the way, if it happens to be inflammatory but it's still important and relevant and admissible, then it should come in. Thank you.

THE COURT: Mr. Ottaway?

MR. OTTAWAY: Yeah. Two issues in there, Judge. I

think we actually agree. We just talk around it in opposite ways. There are two issues with inflammatory statements. One is in the evidence which can be dealt with, is it relevant or is it overly prejudicial? The other is in the statements of counsel which come out as a corollary to the evidence. I don't know that I've ever had anybody oppose a motion to keep inflammatory statements out of court. But this is not something we get on TV; it's not something that the news picks up and says, in fact that they did it allows it to be used in your courtroom.

This is a court of law. It's going to be very important that the public perceive this as a fair and balanced trial. And the use of inflammatory dialog, inflammatory questioning, inflammatory statements is a hindrance to that and a waste of time. Calling us up to the bench every time that happens to make an argument, both, makes it impossible, you know, ring a bell and makes it a waste of the Court's time. So I'd just ask we have that order entered. But the Devil is in the details. Reggie and I agree about that.

MR. WHITTEN: But, Your Honor, again, this is a definitional thing. Why -- if you're like me, filing a motion in limine requiring them not to introduce any evidence about its 2403, more relevant, more probative than prejudicial. That's not how we try cases. And I don't anticipate the Court's going to be calling us up, chewing us out over being

inflammatory. We don't have a history of doing that. I've never even had a bar complaint.

So we're going to do this right and we're going -- we're only going to introduce evidence. I can tell you as an officer of the Court, we think it's important. The Court's already ruled against them on this Kolodny comment about kingpin because that's what the expert thought it was. The way we should do this is that -- like we always do it. And I've never had anybody file, that I can recall, a motion in limine like this against me, but I certainly never had a court rule against me on something like this. I am going to try the case fairly. And we'll do our job.

That's why we didn't file any motions in limine. I know they're going to do the same thing. So I just ask you, don't handcuff us before the trial even starts with these really broad ones. And that's what the law that's quoted in the brief said, they're not favored, broad motions in limine like this.

THE COURT: You know, you all, both sides have provided me -- looking at these tall binders, I've had lots of background information that's been provided as far as putting these comments in context. You know, I know the two reports were entered and were submitted today but those are being attached to other exhibits. I've reviewed a lot of the expert depositions that have been attached to various motions. So I

think that's the benefit of having these hearings right now as opposed to putting the trial on hold and having sidebars is -- I feel like I am able to put a lot of this in context.

So I'm going to -- what I'm going to do is, I'm going to deny the motion in limine as far as the statements that you, Mr. Ottaway, pointed out. I believe I've got the context for those. I invite the defendants and the State to make objections. If there are other statements that you feel are inflammatory, I'm not going to be offended if you object, because I think what I've heard both sides say here in the courtroom this morning is you don't intend to offer additional inflammatory statements.

I say additional overall. And obviously there were certain ones identified in this particular motion that we're talking about now. But I think Mr. Ottaway's concern is there could be others and Mr. Whitten says he doesn't intend to offer additional ones. If that changes, you can certainly state your objections and we'll hear it during the trial.

Let's go back to Teva defendants motion in limine No. 2.

MR. CURRAN: Thank you, Your Honor.

THE COURT: Mr. Curran, go ahead.

MR. CURRAN: I don't know how much time we need to take up with any of these. I think they're pretty basic. I certainly don't need anywhere near the argument or case law or

anything like that. Judging from Your Honor's previous comments, I think we can get through these really quick. And depending on how Your Honor feels about it, I may or may not need to talk at all.

THE COURT: I'll give you a chance.

MR. CURRAN: Well, no, that's fine. I'm not in love with the sound of my own voice.

MR. WHITTEN: I object to that.

MR. CURRAN: I'm not in love with the sound of Reggie's voice.

They're pretty basic. Not mentioning defendants' cooperation, defendant asserts to privilege motion practice and removal. I don't anticipate that Reggie or Brad or anybody is going to unfairly try to throw that stuff out. It's just -- basically it's -- it's -- maybe a word of warning to them to try to avoid that kind of thing. That's all we're seeking here, Your Honor. I know they wouldn't do it intentionally. But, perhaps, a word from Your Honor before we start might be of assistance.

THE COURT: Okay. You know what I -- in my notes I have that the State thinks this is a little overbroad, speculative. Are there certain things that you want to -- can you be a little more specific?

MR. CURRAN: Sure. Many times, and I've heard a few here today, you know, the defendants cooperating this, the

defendants are all together in on this, and that speaks actually more specifically to one that's coming up in the motion in limine No. 3. But -- and I know it may not matter that much to Your Honor, but perhaps to those watching or in attendance be insistent that there is some conspiracy in the defense of the claim. I don't think it's proper to comment on or to insist. And it's like, you know, you've heard the term un-ring a bell. You know, you can't just jump up and say, hey, that's not fair, you can't do that.

Well they've already done it.

I agree with the motion in limine in general. They're, by definition, somewhat proactive and prophylactic. That's all we're seeking. It's happened before and we would like to at least reduce the times or amount of times it happens during the trial. If you want to take it one at a time, I mean, they're really the same argument for all -- all four of these, Your Honor, A through D. It's just something that doesn't need to be commented on as -- like these are bad things or improper things is all. That's all we're seeking to exclude, Your Honor.

THE COURT: Okay. It seems like there's a -- one, doesn't seem -- I know there's another motion in limine that's asking that defendants be allowed to register objections together and the State's argument was: Which way do you want to have it? Do you want to cooperate as a team or do you want

to be separate?

MR. CURRAN: Well, I think there are actually two separate questions but we can do it any way Your Honor would prefer. If you would rather hear -- and maybe that's the easiest way to do it, just everybody make your own objections. But we're just looking to streamline it a little bit, Your Honor, I think is the only thing. If the better thing to do is for both Janssen --

THE COURT: What I think the point the State was trying to make is that's an example of cooperation. In other words, the --

MR. CURRAN: Well, not really cooperation -- excuse me for interrupting, Your Honor. Not really cooperation so much but to streamline the proceedings, some as opposed to, you know, getting a couple of people jumping up and objecting. I don't know how much of a difference it's going to make. I mean we can just -- it's not really cooperation so much as it is trying to make these things move a little bit faster.

But in all honesty, Your Honor, I don't know how much difference it would make by everyone requiring everybody to make their own objections. It was a thought to streamline the proceedings a little bit.

THE COURT: Okay. Mr. Whitten, do you want to respond?

MR. WHITTEN: Judge, let me talk about the last one

first, if that's okay.

THE COURT: Sure.

MR. WHITTEN: I spent 20 years being a defense lawyer, worked with Jeff on many cases together over the years. I was taught as a young lawyer that the law in Oklahoma requires you to make your objections or you waive them. That's what I was taught. And I'm assuming that's still the law. And I try a lot of -- handled a lot of cases with Larry when we were both representing defendants. If I'm sitting there at counsel table and Larry has one defendant and I've got another defendant, and then Larry makes ten objections, I just sit there on my hands. I -- and -- and -- I ended up having to appeal that case, I think I'm in trouble legally. I think I have to object for my client. I can't sit here and let Larry or Jeff, who are representing my codefendants, object for me. I can't do that. I don't think that's the law. And I don't think this is a discretionary call. I just think you have to make a record and you've got to make your own objections.

I don't think that's something that me or Larry or Jeff can waive. Again, I am not an appellate expert on law and everybody is making fun of me because I don't know any law. But I was taught that at a young age and I'm guessing that is the law. So I'm telling you from the State's standpoint, we're not going to agree that one of them can object for the other one. And you can decide how you want to handle that but

that's -- that's my belief.

So moving on to these others. Your Honor, it's exactly the same thing. We would ask that you not handcuff us with broad motions like this. As I sit here right now, I don't know how the evidence is going to come in, but I can tell you this:

One of our theories -- I'll just -- I know Larry hasn't said anything but I'll talk about Johnson & Johnson for a moment. Johnson & Johnson provided most of the feedback, the raw materials of opioids to many other defendants, including our former defendant, Purdue. So we are going to try to prove that they are liable under that theory, and that they were partners. You know, one partner is liable for the conduct of another partner under Oklahoma law. We have documents referring to it, where they're referring to themselves as partners. So that's not an argument thing; that's an evidentiary thing. I mean their documents speak for themselves. They wrote them. It wasn't us.

So to try to exclude us from referring to them as partners seems to me fly in the face of what the evidence will be. That's not argument, that's evidence. We actually have those documents.

Now, you know the argument really comes in closing argument. We shouldn't be discussing here in early May what's going to be an argument. I think in closing arguments, we have

the right to argue all these defendants conspired in the sense that Purdue jumped onboard early with the help of J&J, providing feedback and started making obscene amounts of money. Many other companies jumped on the money train. So I think there's plenty of reasons to justify arguing there's a conspiracy.

But that's not the issue right now. Let's go back to the law. Just like the last motion in limine, we're not supposed to be handcuffed with these broad motions and then we play gotcha later. Where we're just trying cases in order to play, then get up and say, Judge, you handcuffed them, remember you said, don't -- don't talk about these mean words like partnering and conspiracy and things like that. The way to handle this is during trial.

These are very good lawyers, very good. They know how to do it. Let's see the context of how we're going to admit the document, the context of how we're questioning a witness. That's how we all learned to do it in law school. And indeed, in all of these trial practices courses, some of which I've taught, let's try our case. Make your objections and you'll be able to see then what the context is.

Honestly, Your Honor, you can't see it today, what the context of questioning a witness is not even on the witness stand today, is going to be. You need to wait until you hear the context. So for the same reason you overruled the last

motion, it would be my request that you overrule this one. They're not prejudiced. They can handle this on a case-by-case, question-by-question basis.

THE COURT: Now, part -- part of the motion, I thought, referenced that the State not talk about the cooperation -- or their strategy and conduct regarding the motion, practice, removal and then the motion to continue.

MR. CURRAN: That's exactly right, Your Honor.

THE COURT: And I think what -- the State responded that you, in essence, agreed unless they opened the door. Is that --

MR. WHITTEN: I think that's right. I didn't address that this morning because Jeff didn't bring it up. But you're bringing it up. Right now, as I sit here today, I can't see why I would ever address that. But if for some reason, you know, back -- this goes back to the context of what's going on during the trial. If they were to say something that called for me to say, now wait a minute, you guys did this or you did that. But that hasn't happened. We're sitting here debating about hypotheticals, and I can't really see how that would happen anyway.

THE COURT: Okay.

MR. WHITTEN: Did I answer your question, Your Honor?

THE COURT: Yes.

MR. CURRAN: Just briefly, Your Honor. What Mr. Whitten was arguing was nothing what we had asked for. We're simply asking that they not comment regarding the cooperation defending the claim. I have no idea factually about the conspiracy, about the hobbies or whatever. That's not what we're asking the Court to decide today. It's similar to what Your Honor just alluded to, which is, commenting on the cooperation defending the claim. And I agree with it. I think it's fine we stand up and make our own objections. And I agree with everything he just said. I've taught classes myself and that's what I learned and that's what I teach.

So -- but what we're not looking for the Court's rule excluding whatever any evidence they might have and not have regarding manufacturer, that's not what this is addressing. It's simply improperly referring to the cooperation and defending the claim.

MR. WHITTEN: Well, this is really a strange motion. I've never heard a motion where the two lawyers agree so much. I can't imagine --

MR. OTTAWAY: Just like inflammatory statements.

MR. WHITTEN: I can't imagine doing what Jeff just said. But I don't know what they're going to do during trial, so...

THE COURT: Well, specifically what I wrote in my notes is that they're seeking to exclude the State in talking

about the defendants' cooperating against the State as evidence of a conspiracy.

Is that --

MR. WHITTEN: I think we've said we don't see how we're going to do that. But it depends on what they do. They might open the door. So again, I just don't see the law allows us to be handcuffed on something that we said we don't intend to do. But they might open up the door. So now we have to worry about violating a motion in limine. We ought to just try the case like we all do. If they stand up and open up the door, you'll know it, I'll know it, and we would probably need to then ask questions and they can say, Judge, wait a minute, I object. That's how we ought to handle it. It's a -- imagine using our imagination on how we're going to do this in some hypothetical. I've -- I just told the Court I don't think we're going to do that.

THE COURT: Okay. Anything else you wanted to add?

MR. CURRAN: Not substantively, Your Honor.

THE COURT: Well, I am going to grant this motion in limine. What I've heard is that the State, that they feel like if the defendants have opened the door, then we'll probably readdress this. But just heading -- going into the trial, I would expect that references to the defendants' litigation strategy and conduct would not be brought up at trial.

As far as requiring defendants to object

individually during trial, kind of my opinion, it's more of a pretrial matter, but -- but since we're talking about it, I think I want to inform the defendants that I expect them to individually make those objections.

Let's delve into Teva's motion in limine No. 3.

MR. CURRAN: Thank you, Your Honor. Your Honor, a lot of this motion is similar. There's one -- a couple I really want to talk a bunch about. We can take them one at a time, refrain from addressing defense counsel (unintelligible). I think that's pretty basic. They shouldn't do that and we shouldn't do that to them either.

Of course, Looking at B, no need for objections to rule on that, refrain from characterizing previous testimony. Again, that's something neither should do, improperly. I'll take Reggie at his word that they're not going to do anything improper. Please refrain from making general references to defendants. Now, that's -- that's -- that's kind of a different animal. We've seen this morning, even when Mr. Beckworth brought up the (unintelligible). He said, all these defendants are tied into that.

Well, that's not true. I know he wants that to be true. For example, Teva wasn't tied into it because fentanyl came out in 2007 and Teva didn't buy Cephalon until 2011. So it's important to distinguish between the defendants what they did and what they didn't do. And improperly referencing all

defendants in addition to not being true can be a source of confusion for Your Honor as well as whoever is watching this and reporting on it. So that's a little bit -- a different specific animal.

Obtaining -- and I would be happy to entertain whatever -- any kind of questions or any additional argument there, Your Honor, but I think that's pretty easy to understand. Obtain approval of demonstrative exhibits prior to trial. We just want to know what's coming. That's all. You know, I shudder to think of the cost of these fancy boards, but we would sure like to know what they are before they show up. And I think knowing that demonstrative exhibits before they happen is -- I don't know what Your Honor's preference is on that. I think it's only fair to both sides and they should expect the same from us.

And then F, refraining from commenting on alleged deficiencies regarding discovery. I know that's going to be a little bit difficult as kind of a probative measure but we can certainly see the instance where comments are made about evidence we were not provided and they saw. And I know Your Honor has read this. I don't want to waste a whole lot more of your time with it. But, you know, taking advantage of the fact that they've had access to information that we ultimately were not provided, whether it's, if by court ruling or whatever, I think that's something important that has to be addressed at

this stage before the trial starts. And then informing witnesses of limine rule, that's pretty basic for both sides. Thank you, Your Honor.

THE COURT: Okay. Mr. Whitten?

MR. WHITTEN: Yes, sir. If I may, can I do this like I did the last one and start at the end?

THE COURT: Sure.

MR. WHITTEN: Well, this -- this demonstrative rule is very, very important to me. And, you know, there are a lot of really good lawyers in Oklahoma and people do this different. And I'm not the only lawyer in the case, but I can tell you, I create most of my demonstratives on the fly. And may I use an example?

THE COURT: Sure.

MR. WHITTEN: I think Larry is one of the greatest lawyers in the State. He has used a demonstrative prop -- where is it? Where is your phone? There it is. He's used this as a demonstrative in this courtroom twice which I admire and respect. It's good lawyering. But under this ruling here, they've got to tell us in ten days or ten days before trial, I think -- they're going to use the phone as a prop. I'm guessing Larry may not have even realized he was going to use the phone as a demonstrative probably until the hearing. That's just good lawyering.

THE COURT: I think they're trying to eliminate

the -- the unfair surprise, so I think it's one thing to conjure up something when you're sitting at counsel table during a hearing, it's another thing to spend extra efforts, you know, after hours, over the weekend and then --

MR. WHITTEN: Well --

THE COURT: -- lift it up under the table and show it to us.

MR. WHITTEN: Let's address that one then. So I'll get more specific. Generally speaking, I still think my point is a good one. Sometimes demonstratives are created literally on the fly. But I get your point, so let's move forward.

There is no court rule in Oklahoma. There is not a statute, there's not a local court rule, there's nothing -- and I've been practicing here almost 40 years, Larry is more than 40 years, but there is no rule we have to give our demonstratives ten days before trial.

Now, generally, we'll create a lot of these. Now, I'm not a computer guy, but these young folks, I can sit here and tell them, hey, here is how the trial is going, let's create a demonstrative, pull it up on your iPad and we'll create one. That's how we intend to do a lot of this trial. And this rule handicaps and makes really good trial lawyers something less, because now they've got, what do they say, I'm doing a lot of this with my grandchildren where we teach them to paint by the numbers because they're so young, they're not

very good at painting without the numbers. But really good trial lawyers paint without the numbers. We add the -- I'm going to create a lot of demonstrative exhibits during trial. I can't -- I don't think it's fair to require us to think ahead and do all of our demonstratives in advance.

What -- what's coming next? Do I have to write my questions out ten days before trial and give it to them? I mean to some extent this is just good trial advocacy. This is what lawyers pay money to go see people, like, Jerry Spence, and learn how to be, you know, really good trial lawyers. This is not right. And this Court, in this county, has never required, to my knowledge, any of us, in any case I've ever had here in Cleveland County or anywhere throughout the state. I've tried cases in most of the counties in this state and I'm not familiar with that ever being required. So this one is really important to me. I intend to use my time doing what I do which is my work product. I shouldn't have to disclose it to them. I am going to work before trial, but doing demonstratives before trial was not one of the things we intend to do.

With that said, there are many demonstratives that we do have. And they've seen those. I'm not going to tell you -- can I tell you that I'm going to use this one at trial? No way. I don't know. But we should not be handicapped. This is a relatively new trend in the law where -- and I used to be

a defense lawyer -- but you want to take away the skill of some really good plaintiff lawyers who have them and that's -- I object to that. I don't think it's fair and it would be unprecedented.

So I would ask the Court not to make us do that. It's not fair. It's -- there's no authority for it that I know of. You may know of some authority, Judge. Maybe you've required it in a case that I don't know about.

THE COURT: I think that's a Judge Cantrell rule.

MR. WHITTEN: I haven't heard that one.

THE COURT: That's -- that was part of the referee. I think he has a rule on it.

MR. WHITTEN: Now that's a new one to me, but that -- that's a new one. I haven't seen it. And I don't practice in federal court as much as some. I do practice in federal court but not as much as some people do. Maybe there is a trend, may be something that federal judges are requiring that. But as we point out in -- we're not in federal court and we don't have those rules, so I would ask, as my friend Robert McCampbell said, this is the trial of our lifetime, or something -- I think that's something -- what he said Monday. I agree with him. Let us try our case the way we learned how to do it and let us create our demonstratives in the ordinary course of the moment. And that's -- there's never been a rule about that.

So let me go back to -- I'll just address the ones that Jeff talked about. I think the first thing he brought up is, you know, he said, I don't expect Reggie to do anything improper. Well, he knows I'm not going to, so does Larry. You know, we might make a mistake. We're never going to do anything we know is improper. That's never going to happen. And I think the Court knows that too. We shouldn't -- it's not proper to file a motion in limine on something like that. And that's why we didn't file a silly motion in limine on -- on them because I know these are good lawyers and my friends and they're not going to do that.

On the other one, this is an evidentiary thing. He mentioned that Teva did not participate in the book called "Responsible Opioid Prescribing". But that, that's a good point for cross-examination. If it comes up, like Mr. Beckworth brought it up today, let him cross-examine on that. But I believe the company they acquired, Cephalon, did. Isn't that an issue? Shouldn't the lawyers be allowed to fuss about that by cross-examining people and introducing documents? And look, if we had cross-examined over something that we're just flat wrong, we'll look silly and we probably should.

But, you know, I just think this motion is another one of those broad motions that should not be filed. They are not prejudiced by this. There's no jury to worry about. They can object at the time. And let's see what the context is.

It's much to do about nothing. They don't even know if we're going to do some of this stuff, nor do -- do we. So I've asked this question, Your Honor. I respectfully request the motion be overruled.

MR. CURRAN: May I briefly, Your Honor?

THE COURT: Sure.

MR. CURRAN: With regard to the -- the other issue Cephalon didn't do that. They're separate companies, Your Honor. And if there were to be an award in this case, the separateness of the companies is of paramount importance. The fact that they know Teva didn't participate in that and went ahead and let Your Honor think they participated in that book is a little bit disturbing. So I would ask for some degree of -- of word that -- and I'm not talking about that book in particular. It's a phenomenon that many of -- that all defendants did this, the defendants were all tied into that. The book itself is red herring. But the point, the illustration of that, for that (indistinguishable). And then I think I heard Reggie say -- first he says, nobody does it with regard to identifying demonstrative exhibits, and then he said, it's a new trend and then he finds out people actually do it, and wait, they do it in federal court too.

This is a trial of a lifetime, I have no -- no argument about that. It's probably the biggest one any of us will ever deal with. But it's -- it shouldn't be done by

ambush or surprise. They should at least show us the demonstrative exhibits. Whether they use them or not is irrelevant. We should -- we should know what's coming and not have to deal with their asking for billions and billions of dollars, and deal with on the fly that we have not seen. That's all we're looking for with that, Your Honor. And I think that's all we talked about.

Am I wrong? I think that's all we discussed and I think Your Honor has read the rest of it. I don't know how much more time to take up.

THE COURT: I think we've covered it. Mr. Ottaway?

MR. OTTAWAY: I just want to talk about the demonstratives a bit. There are three kinds of demonstratives. One is not a demonstrative at all. It's a blowup of a piece of evidence, which I think we're going to talk about probably at the pretrial conference, how do you want to use that? What do you want to do?

The other is a demonstrative that was prepared in advance, say, to use during opening statement. And I'm perfectly willing to share mine, ten days. I agree with Reggie. It's a little extreme because we're doing this and we don't really have time. The night before or use of a witness before, I'm perfectly willing to trade with them if I have something prepared in advance, particularly on opening statement. I'm going to use a demonstrative -- not an exhibit,

a demonstrative prepared by me that's been prepared in advance and ought to be shared so that the other side can object if there's an objection subject to it.

The third one is the one Reggie mentioned, which is preparing demonstratives on the fly. That's usually done with the witness who is -- got in an area you didn't really anticipate. And I agree with Reggie on that. I will do some of that. I think Judge Burrage knows that. But if they've been prepared in advance, there's no reason not to share them shortly before they're going to be used so we don't bump into this problem of Judge, wait a minute, that's not what was done, that's not what was said, that's inflammatory. It can be handled so much easier. And I'm willing to work something out with Brad and Reggie to make sure that we can get those exchanged, those ones that are prepared in advance.

MR. WHITTEN: Let me be real clear. We haven't prepared them in advance. And unless you order us to, we don't intend to. But even if you order us to, I guarantee we're going to miss something. I mean, some of our witnesses, many of our witnesses are from out of state. We may end up doing our prep for them on direct. Not all of it. Because they have -- most of them have been produced for depo. But a lot of it, we may -- remember those depos, we're on the defense. We'll be on the offense during trial. So we may handle them totally different at trial than we do during the depo. But any

demonstratives, we -- we reserve the right, unless, respectfully, unless the Court orders us. We'll follow your orders, whatever you order us to do, you know that. But our preference would be to do these when we feel they need to be done.

The second thing is sharing demonstratives. You're giving away your work product. That's my work product. And sometimes I don't do those in connection with a witness. Sometimes I'm sitting there at night, I think, you know, these guys said something that, wow, here is an opportunity for me to make point one, point two, point three, and it will help me win my case. I shouldn't be handcuffed in doing those ten days before trial. It's really impossible to do all of that.

And then opening statements. I'll get back to, again -- I want to address something my friend Jeff said. I -- I don't know if I said it right or not. My intention was to say, I've never heard of a judge ordering us to do that. I have heard of lawyers of recent trend of having everybody basically try their case and write their questions out in advance. I have heard of that. That's what I was referring to. I said, Jeff, I said that wrong, I apologize. But I've never seen a court order us to do this and I -- this is not the case for the Court to change, you know, the precedent and make us try our case in advance. I don't want to give them demonstratives we use in our opening, beforehand, because I

used to do what Larry's doing. I was a defense lawyer for 20 years. I would have loved it if the plaintiff lawyer wrote out everything they're going to say, that gives me a tactical advantage to have it in advance and that's not right. And I spent 20 years, I never had anybody do that. I never got that advantage. It's not fair.

And we have to go first. The reason we have to go first is because we have the burden of proof. The burden of proof is a hill and we have to climb. So using our abilities as trial lawyers, we should not be handcuffed on that or punished if we are good trial lawyers. We shouldn't be punished for that. I would request, respectfully, that the Court not change all these years of precedent and how we've done it forever and make us write it out, our stuff in advance. I don't want to do that. I will do it if you tell us to, of course. I'm not trying to sound disrespectful. We'll follow whatever order you enter, Your Honor. But we don't want to do that because it's not -- it's not right.

THE COURT: All right. I'm going to -- so there's a couple of parts to this, this motion. As far as the prior approval of props, more than -- more than just props, I guess. I'm going to deny it except for as it relates to opening statements. I want the parties to share the -- by the close of business Friday, before trial, I want you to share any slides or PowerPoints that do not include -- that include things other

than exhibits that have already been produced. So if you're creating a special PowerPoint or special slide as part of your opening statement, just share it with the other side by close of business Friday.

MR. BECKWORTH: The Friday before --

THE COURT: Friday the 24th.

MR. BECKWORTH: Okay.

THE COURT: All right. But I'm not going to make any other ruling concerning that. Obviously, during the trial, if the other side has a demonstrative and you want to object, then make your objection.

With regards to informing witnesses of rulings, yeah, I'm granting the request that that happen. I'm going to deny the other facets of the motion in limine No. 3. As far as -- I think we can probably have some more discussion at pretrial conference about directing questions to counsel. We talked about the objections made by one defendant as opposed to separate defendants.

All right. Let's now go to Janssen's motion in limine No. 2 regarding lobbying activities.

MR. BECKWORTH: Your Honor, I might just ask on this -- well, I don't know if this would help to go quicker. It seems like their 2 and Teva's 10 probably are more the same issue. And 3, which is advocacy, which is very similar. I would think if they wanted to do and you wanted to --

THE COURT: I think 2 and 10 are very similar, but I know Mr. -- it looks like Ms. Strong's going to get to argue No. 2. Was -- is there somebody on -- for Teva going to do No. 10?

MR. BARTLE: I'll do No. 10, Your Honor.

THE COURT: Okay. Can you guys squeeze that into 20 minutes?

MR. BARTLE: Maybe 25, Judge, but I'll be quick.

THE COURT: Okay.

MR. BECKWORTH: And on the 24th, I just want to make sure we understand that that refers to creative demonstratives, when it -- when they're applied to, for example, a page from an exhibit that's blown up.

THE COURT: Does not apply. It's already been shared.

MR. BECKWORTH: Thank you.

MS. STRONG: So this motion in limine is directed to lobbying activities. It's been made clear through the discovery process that the State would like to introduce into evidence examples of lobbying efforts by Janssen or J&J and to hold premise to liability based on those efforts. That is absolutely prohibited under the Noerr-Pennington Doctrine or by the U.S. Supreme Court and -- and recognized throughout the country. And so I want to just start with the basics of it.

The right to petition is a fundamental First

Amendment right, Your Honor. And it's -- it's recognized in some courts as the Noerr-Pennington Doctrine; in other courts it's just petitioning activity. It doesn't make a difference which way you read it. Some courts, you know, use one set of language and directives; other courts refer to it as a petitioning activity. It's the same thing, Your Honor. And this has been recognized outside of the antitrust context. The initial report that -- the two opinions that the U.S. Supreme Court came up with the context of antitrust claims, but it has been expanded to all sorts of claims. We've put some up on the slides, Your Honor, to show you civil rights cases, RICO cases, contract interference. This is a -- a right that is recognized no matter the nature of the claim. And lobbying, specifically, is a textbook-type petitioning activity that is protected. And the force of the protection is quite great, Your Honor. The U.S. Supreme Court has recognized that even where a party lobbied with improper motives or used improper means, as long as they were seeking favorable government action, the activity would be protected. And that is precisely what the State alleges here, is that Janssen or J&J was out there trying to influence government action, not some sham proceeding. And so we see even the case that they cited -- let me back up one -- even in the context of misstatements, here is a case in, *International Brotherhood of Teamsters against Philip Morris*. It's 1999 case out of the 7th Circuit. The petitioning

immunity applied even where the tobacco manufacturers allegedly made misstatements about the relationship between smoking and health. It still is protected. And that's, again, precisely what the State is alleging here.

The State points to a *California Motor* case and -- alleging that there's this -- there's an exception that ought to apply. No, that case actually does not support their position because the sham exception clearly applies to scenarios where they are not trying to influence government behavior. So in that case, what was actually happening, is they were trying to prevent the competitors from having access to the tribunal. And in that case, it wasn't about actually getting favorable action out of the agency, the legislature, but it was actually trying to prohibit other parties from having access. And so in that context, it wasn't genuine lobbying activity. It wasn't really about the right to petition, it was about blocking other folks's access. And that was a sham exception for which you don't get protection. That's not what's alleged here, and so the sham exception does not apply.

The protection extends to administrative lobbying as well. To the extent that the State would like to introduce any evidence about activities related to State agencies, the question comes, what's the status of that? Is that the same as the legislature or not? The court has recognized that indeed

it is recognized when you are interacting with administrative agencies as well. There is a -- an exception that can be broader in the context of administrative agencies. And the case law, I really want you to focus in on the cases, Your Honor, because the case law talks about how it depends on the nature of the administrative agency.

If the administrative agency is more like a judicial body, more adjudicative, then if someone submits false and misleading information, that would not be protected if it's in the context of an adjudicative body. If the administrative agency is more like a legislative body, then even if there are misstatements, that activity is going to be protected and that's what the case law distinguishes when we get into the context of administrative agency communications as opposed to communications of the legislature.

So this is a really important distinguish -- distinction here. In this case, they have not alleged that we have submitted any false or misleading information to an adjudicative body like an agency that would allow it to have some type of exception here for false and misleading statements; instead, there's no evidence of that whatsoever. But to the extent that it would be -- I don't think there's any adjudicative body at issue here, Your Honor, and if they would like to tell me what that is, I would be curious to know because I think every body that they identified would be

legislative in nature. And I'll give you an example.

Courts, for example, have said, the San Francisco Board of Permit Appeals, even though that place is where you submit an application for a real state permit. They function more like a legislative body than an adjudicative body. And so, even if there was some false submissions to that body, they would be protected. I don't believe there's any false submissions here whatsoever, Your Honor, but I wanted to point out the distinction. You've got to look at what the body is that is at issue and then it dictates the nature of the protection. And I will -- I will give you a couple of cases, Your Honor, to look at.

The two cases on the screen right now are important. *BE&K Construction versus NLRB*, 536 U.S. 516. The *Potters Med* case, it's on the slide as well, Your Honor, but I want to give you a third case that's not on the slide, that really gets into the distinctions that are important for you to understand which is the *Kottle versus Northwest Kidney Centers* case. The cite for that is 146 F.3rd 1056, the 9th Circuit 1998.

So in the context of that, Your Honor, we would ask that no evidence be admitted with respect to Janssen or J&Js' lobbying activities whatsoever, because it's protected and there can be no liability based on it whatsoever, Your Honor.

THE COURT: Is there no exception if those activities further some unlawful activity?

MS. STRONG: There's no exception for that, Your Honor. Again, if there's improper means, improper purpose, no. That is absolutely protected in these cases to establish that. Here is one in the context of the smoking industry, Philip Morris. If the petitioning -- if the statements are designed to get favorable laws and ward off unfavorable ones, even where the tobacco manufacturers allegedly made the statements about the relationship between smoking and health, those petitioning activities are protected.

THE COURT: Okay.

MS. STRONG: It's very strong immunity. Again, I suggest you read those cases to better understand to the extent. I don't know they're going to make an argument that -- that they should fit into the administrative agency component where there is greater space for an exception for false and misleading statements. So there's a few things to consider there. Is there such an administrative agency at issue? I don't believe so. I think anything that they're going to identify would be more in the nature of a legislative agency and would fit the -- the kind of petitioning that is incredibly protected. But if they were to try to get it to the next level, which I don't think they can, what is it that was submitted to that agency that had an adjudicative process? There was testimony, there was a right to appeal, things like that. I don't know what that evidence would be. But to the

extent that they broadly talk about lobbying efforts and it's clear, Your Honor, that lobbying efforts ought to be precluded and there ought not be any evidence of that in this case.

THE COURT: Okay. Thank you.

Let's go ahead and hear Mr. Bartle first.

MR. BARTLE: Your Honor, Harvey Bartle on behalf of Teva and Actiq. I promise to be very quick. Teva and Actiq defendants join in Ms. Strong's arguments and, like, what the Court just said. Thank you.

THE COURT: Thank you.

MR. BECKWORTH: I guess the law guys have to argue the law sometimes, so Reggie and I will.

MR. OTTAWAY: I object on Reggie's behalf, Your Honor.

MR. BECKWORTH: Well, one of my best friends, I fish with him all the time and it's amazing the things he claims he can't do. I don't know how to back the truck up. I don't know how to back the boat off. So over -- after a lot of time, I figured it was -- really, what happened was, he just didn't want to do the stuff and he always made me do it. And what I wonder is, Reggie is quite the law guy.

THE COURT: You avoided the inflammatory comment.

MR. WHITTEN: See my point?

THE COURT: I'm kidding.

MR. BECKWORTH: Your Honor -- so, Your Honor, just

to be clear, I disagree, point 1. Point 2 is, we're not alleging that the defendants have done something wrong by lobbying. They can lobby. We're not alleging they've done something wrong by associating. They can associate. We're not alleging that they've done anything wrong by speaking. They can speak. That's not what's at issue. What is at issue is -- may I approach?

THE COURT: Yes.

MR. BECKWORTH: -- is improper influence through lying, but also, as you hear me say sometimes -- do you mind if I -- Your Honor, just to kind of back up a minute. I don't know if you've seen this document.

THE COURT: This was attached but it wasn't that clear.

MR. BECKWORTH: Yes, sir. So what this is, this is a document that J&Js drug, Nucynta, when they lunched it. Part of their marketing activity, how they would market their drug to make money was in a document that had this map, the influence map. We'll see this at trial. I think the witness said that influence (indistinguishable) influence props, several dozen times. But the word is whether it's an influence. And as you see here on this deal, and I'll walk you through it here just as quick as I can.

Let's point you to the bottom. The last thing on here is value proposition, making money. That's fine if they

want to make money. That's fine. But their witness testified that the things that happened here are part of their P&L for marketing. They go against the bottom line for the product. And what we have here, what we'll talk about here in the trial, is these are all the boxes that influence the decision-making of a prescriber. You've heard, ad nauseam, these guys say, well, we don't have any evidence of individual doctors.

Well, if you look here, the biggest box on here, this is the money for the drug companies. It's healthcare providers, midlevel practitioners and pharmacists, because you can't get a drug if they don't prescribe it. And if you look at this flow chart, it's confusing because there's so many darn boxes and arrows. But look at what they are. Who do we have to influence for me to get to the doctor? Well, I use employer collusion, I use Key opinion employers, self-insured private employers, fully-insured private employers. U.S. government, state government, legislative channels. (Indistinguishable), that is advocates for groups and prevention.

THE COURT: Grassroots?

MR. BECKWORTH: Sorry. Grassroots, drug abuse prevention, advocacy groups. Medicare, health plans, pharmacy benefit managers which we have state and private level. Health plan administrators, and on and on. Then you get down here.

KOLs, a big part of our trial. Professional groups associations, we'll talk about those in a minute. That's why I

want to tie this together. Patient advocacy groups: FDA, DEA -- ah, she talked about administrative. State medical pharmacy courts, state law enforcement, state legislatures, HHS and IMO DEA, Congress, state influence, activism.

Now we get down to the bottom. We got the patient. Who's talking to the patient? Well, come all the way up here on one side, but over here you have patient advocacy groups, part of the defendant's influence operation. All of this is designed to get drugs to the doctor so they'll prescribe them to get to the patient. So in this instance J&J can make money. Is it unlawful for them to lobby a state or federal government? No. But is it a part of the overall scheme that happens in the case and to show how and why the drugs get to where they do and how and why doctors may have been influenced improperly? Absolutely. And there's not an -- well, let me back up a second.

We're not trying to say, nor will we ask you to find that, because they lobbied someone, they are, therefore, liable. That's not it. We are advocating. And I think the law absolutely allows us to show that you can't lie. You cannot lie. You cannot engage in sham conduct. You cannot go to anyone with the false and deceptive purpose. Now, here is a great example of this.

May I approach again?

THE COURT: Yes.

MR. BECKWORTH: You've seen this document a lot. This is why this gets confusing, why this is not appropriate for a motion in limine, and why at the end of this case you will be able to decide the findings of fact and conclusions of law, what is and what is not appropriate evidence. Now you've seen me use this a lot. I love this document. It's quite thick. This says, Epidemic of Pain in America, American Pain Foundation and Pain Care Forum. I don't care to go through the whole thing.

We've talked about it in the past. But if you just looked at this document, and I'm sure they will try to use it at some point in the case and, say, well, this was a lobbying effort. We went to Washington. Cooperation with a representative. This was part of our lobbying effort. You know that might be a decent argument if that were true. This was a document that's been widely-handed out. It's in the press. The Associated Press has reported on it. This document wasn't just a lobbying effort. This was a coordinated effort by the Pain Care Forum, which Purdue created at the behest of a lady, who we'll talk about at trial, who worked directly with Purdue, who tried to shield industry so it looked like other folks were behind stuff when it was really the manufacturers.

And trust me, when you say I talk about conjecture, the document is clear about what happened. Judge Hetherington knows, he was in the deposition when we went over this. They

all worked together and just like on that book, they're saying I said something that's not true. The American Pain Foundation, this was Johnson & Johnson's go-to partner. We'll talk about how they funded them, how they all worked in collaboration.

This document put out false information. It had statements that addiction rates weren't what they were, in reality, the pseudoaddiction and other things that were false. Who did it go to? It didn't just go to members of Congress that showed up. It was handed out broadly and is in the public domain. So can we not talk about that at trial because it was, in part, due to a lobbying effort? I think not. That's not what the law says, nor is that what we're trying to do. We're not trying to say, you lobbied, therefore, you're liable. I don't even think we're trying to say, you know, you lobbied dishonestly, therefore, you're liable. That's not for us to say. What we're saying is, part and parcel of your overall marketing attempts here were to lie and to deceive the public. Everyone. And there's plenty of evidence like that.

Now, going back to this influence map, I think this is a very interesting thing for this case and not in the motion of limine stage, but at the end of the trial, you're going to have to decide whether conduct that they engaged in is protected or not. And that could be lobbying or other things. For example, we all know it's going to be, I think, an argument

at some point in summary judgment tomorrow. Is free speech prohibited? No. But can I lie? Mislead? No.

So you're going to have to look at the end of this case and go, here's what the law is. There's a First Amendment right. I can do certain things under the First Amendment, other things I can't.

Now, do the facts of this case rise to an exception or a cause of liability under what is and isn't allowed? It's just that simple; and we'll get through all of that, through the course of the trial.

Now, going back to my influence map. I've raised an issue earlier today and it will be part of this case. A big part of their case is that they're going to try this, to say that the State failed, that our legislators failed and that we should have stopped the crisis that they claim they had nothing to do with. Now, they can't do that. That's not what the law allows. You can't say we failed to litigate because we're not seeking damages. But let's just say they were. Is it really okay to come into a state with a book like that one and say that these drugs aren't really addictive, that pseudoaddiction isn't real and all the other things that they said influenced our legislators to make decisions, influenced our courts to make decisions, influenced our boards to make decisions, go to our DUR board and hammer them for years about their drugs, do all the things that they did, then come in and say, State,

you're at fault.

Now we don't have a contributory negligence claim. It's not allowed under the law in any way, shape or form. But, State, you're at fault and you should be responsible for your own problem. And by the way, the Judge can't see any evidence about how we misled anybody. We're just completely immune from doing that. That is not what the law says. It's not what the law allows. So I think this is, quite frankly, an easy one. I'm not in the robe and I don't have to make the decisions on this, but I think it's an easy one to handle.

The law is what the law is. There is protected speech, there is not; there are protected rights, there are not. And we will put on evidence in this case, and you will decide at the end that the evidence that we've shown fits within the statutory constitutional legal framework, state law, any federal law that overrides or places into that, and decide whether we've met the requirements that we have to meet. It's that simple. And I don't -- I don't mean to make light of the fact that some of these issues are complex, but I think the way to handle it is just as I've described.

THE COURT: Now, do you all -- I don't know that I informally invited the defendants to argue No. 3 regarding advocacy groups, but I think I heard you --

MR. BECKWORTH: That's fine.

THE COURT: -- the defendant. Okay.

MS. STRONG: I do have an argument for that.

THE COURT: I do want to hear you.

MS. STRONG: So if I could just respond briefly.

Again, none of what he's talked about was allow -- the Court to allow the petitioning activity, the lobbying activity itself to be admitted, Your Honor. The case law is extremely clear and I'm going to read some of it because it's not -- the State's argument, that you cannot lie, that is not reflected in the case law. It is inconsistent with the case law.

So look first to, 9th Circuit case, city -- *Empress versus City and County of San Francisco*. It's five -- 419 F.3rd 1052 2005. It talks about the Supreme Court has described the right to petition as among the most precious of the liberties safeguarded by the Bill of Rights and intimately connected, both in origin and in purpose, with other First Amendment rights of free speech and free press.

Under the Noerr-Pennington doctrine, those who petition all departments of the government for redress are generally immune from liability. It goes on to say:

In this case, the complaint here does not allege that the defendant used government processes as opposed to the outcome of those processes as a mechanism to injure the Patel's, and that, therefore, the petitioning activity falls under the sham exception for the Noerr-Pennington doctrine. As

such, no matter what Shaw's motives were, his petitioning activity as alleged is immunized under the Noerr-Pennington doctrine.

And it goes on to cite several cases, pointing out the illegal purposes and motivations behind petitioning do not illegalize the petitioning conduct.

It's quite clear in the case law, Your Honor, that even if the petitioning conduct is illegal, even -- even if it's improper which there is no evidence of that here, but even if it were true, what they all allege, it is protected and people are immune from liability associated with that conduct and so it cannot be introduced as it would provide a basis arguably for liability. It cannot be protected activity and cannot be introduced.

I want to point out one other quote, Your Honor, from the *Kottle* case that I referenced earlier, which is, 146 F.3rd 1056. And it talks about the scope of the sham exception. It says, the sham exception for intentional fraud on a court cannot likely be taken to apply in a legislative context because as the Supreme Court has observed, the political arena has a higher tolerance for outright lies than the judicial arena does.

So again, that case talks about the distinction between adjudicated bodies and legislative bodies and talks about how agencies can sometimes fall in one or the other. And

you've got to look at the process and decide if it's more like a judicial body or more like a legislative body. And unless there's an ability to put on evidence, have an appellate right, things of that nature, it ordinarily falls on the legislative body.

And as a result, Your Honor, again, we would ask that all petitioning and lobbying activity be excluded from this case in light of these protections.

THE COURT: Thank you, Ms. Strong.

MR. BECKWORTH: May I?

THE COURT: Yes.

MR. BECKWORTH: Are they saying that they lied to Congress and the State? Is that the deal?

MS. STRONG: I just said, Your Honor, we didn't. There's absolutely no evidence of lying. If you'd like to interpret the argument that way, Brad, it is not what I said. You're misinterpreting what I said. I'm trying to explain to you what the law is and I would ask the Court be properly informed about the law.

MR. BECKWORTH: The reason I asked that, Your Honor, is if they -- I don't get it. We'll put on evidence if they did or didn't, I would think, and then you can hear the evidence, and -- let, let me just say this. If there's no evidence they did anything wrong, then, of course, this would be moot. Right? Because you wouldn't have to make a decision

about whether they had made wrongful conduct that would fit in some exception or some type of rule. So that would be gone.

If you do find evidence that they did something wrong, I think you will then have to decide whether that evidence is relevant or even something you can look at in making your decision. Let's say, for example, that we had ten individual pieces of evidence, one of which was lobbying. And then we get down to it and you decide that we've carried our burden of persuasion and production.

Do you look at No. 10 and say, that's the only reason they're liable? I don't think you would. But you can look at the law and decide whether you want to consider something or not or whether you're able to consider something or not.

I pulled one of the cases that Ms. Strong was talking about, *California Motor* Transit. I'm just reading the quote, I can read -- can just read the whole case to you, but... it's on page 515:

United States Supreme Court First Amendment rights may not be used as the means or the pretext for achieving substantive evils which the legislature has the power to control.

So that speaks for itself, to me. I think we have to look at what -- what we're dealing with here. We're dealing with the greatest manmade public health crisis in history. We

allege they played a part in it. They are going to allege that the State of Oklahoma is at fault and they are going to say, under oath, if they're consistent with what they said under -- previously, that they bear zero-point-zero percent responsibility. Well, that's something. And then they're going to say that even if we lied to the State, the Feds, or anyone else to achieve the goal of making billions of dollars and creating the worst nuisance in Oklahoma history, that we're completely immune from lying to everyone. Because First Amendment protection are so absolute, that we can lie to the decision-makers in the State of Oklahoma and then blame them for believing our lies.

And the most remarkable thing that you just heard, that I heard, that's why I asked the question that I did, is -- you know what, it's more okay to lie to a legislator than it is to lie to a judge. That's what we just heard. Just -- you can shake your head, that's what happened. We all were here. So I think this is a strange argument to make at this stage of the litigation. I think the evidence will speak for itself. I also think you have to understand, Your Honor, the context of the case.

One of the things that we'll show is, like, this Pain Care Forum. One of the reasons it existed is that, by 2001, Purdue, J&J, all of the main factors selling opioids during that time, they knew a problem was brewing and was

getting really bad and they knew they had to push back, to lie to make sure that more opioids were available. They had something they called barriers and they tried to say it was barriers to access, but really what it was was barriers to make money. And I'll give you a great example:

The PPSG is the Pain and Policy Studies Group. It's a group out of Wisconsin. Purdue funded them. I think Johnson & Johnson funded them. I believe J&J did, but I don't have my documents so I'm not going to qualify that one. But they were all on pain care -- you're shaking your head again -- they were all on the Pain Care Forum together. Let me give you an example of how that works:

The PPSG would put out report cards on the efforts of states and they rated Oklahoma as a C+ on opioid policy. Now you would think that means that Oklahoma was too relaxed in its laws and enforcement mechanisms about presenting opioid abuse. Not so. The C+ myth that Oklahoma was too restrictive compared to other states. And so that document was disseminated widely across the U.S. and into Oklahoma. Well, interestingly, what happened -- this is an example of Purdue's and PPSG's -- PPSG then paid -- I'm sorry, Purdue paid for PPSG to go out and get on radio shows and talk about Oklahoma and others and how they needed to be more wide open in their opioids. Another example of that one:

PPSG, the three principals of it wrote an article

that was published in the Journal of American, the JAMA, in that they went out and used the *Kottle* case. You saw that last week. After that was published, Janssen, Purdue went out and told their sales folks, told their media operatives, respectively, to use that report in a way to tell the public, tell doctors that there was not a problem of ER admissions tied to overprescribing or increased prescribing of their drugs.

When I showed those internal documents to the guy at PPSG that wrote the article, what he said was, I've never seen this done before. It's misleading and for them to use my work in this way is deceptive.

So I don't think that whether you're petitioning the State directly, like, appearing before the DUR Board or using other people's work in a false and misleading manner through your sales force, through your operatives, through the media is protected speech. It's not protected speech. And I think we'll show that at trial. Thank you.

THE COURT: Okay.

MS. STRONG: And, Your Honor, I could not be more clear. There is no evidence of any misrepresentation stated to anyone; the legislature, any administrative agency. There's nothing there. What we're trying to do here is narrow the case, Your Honor. We know that they have made broad allegations about lobbying. It's unclear that -- what they're going to try to introduce at trial, which is why I don't have

clarity. But if they raise the issue of lobbying or petitioning activity, I would ask that we pause or stop because it ought not be introduced. And it can be if they can demonstrate that there's something that qualifies for a sham exception because there's a tribunal, that's like a court, to which they allege, and they have no good faith basis to state that there was false information submitted, then maybe there would be a basis to introduce that kind of evidence.

I don't believe any of that evidence exists on either level, either from the falsity perception, Your Honor, or from the nature of the tribunal would be at issue. And I want to just point out the case that he just quoted, the *California Motor* case, I cited that in my original argument, Your Honor, and I would note that in the case it expressly says:

The allegations are not that conspirators sought to influence public officials but that they sought to bar their competitors from meaningful access to adjudicatory tribunal and to usurp the decision-making process.

That's what I explained to you before. That the context of what he read was in the context of that case, where it was not about legislative activity, petitioning activity that is protected, Your Honor.

THE COURT: I think we'll go ahead and hear Ms. Fisher out on advocacy groups and then I'll rule.

MS. FISHER: I will try to be brief on this, Your Honor, because I know we've already heard the rebuttal on it.

So advocacy groups, like other companies, Johnson & Johnson and Janssen, have participated in advocacy groups and such association is not only proper but it is guaranteed by the First Amendment.

Everybody today is suddenly proud to be a book lawyer which is something that's ironic in this case because we've been made fun of for being a book lawyer. I was made fun of for being a book lawyer, which is also ironic because I'm not the strongest book lawyer, but I think that I would be proud that I'm trying to talk to you about the First Amendment today.

So the First Amendment: Right of association is guaranteed by the First Amendment. So it's not only a book, it's sort of the book we should be following in this case, Your Honor. So the right to association, an advocacy is for all sorts of associations. And the *Patterson* case which is at 59 -- excuse me, at 58 U.S Supreme Court states:

It is immaterial whether the belief sought to be advanced by the association pertain to political, economic, religious or cultural matters.

MR. MERKLEY: May I interrupt? Can I take that down?

THE COURT: Yes.

MS. FISHER: I'm sorry.

So here, plaintiff hold Janssen and Johnson & Johnson liable for statements made by these groups just because of the association, and that's expressly what the First Amendment forbids. In order to show that Janssen and Johnson & Johnson were liable for the statements, they must show that Janssen or Johnson & Johnson specifically intended to further the political statements or authorize the unlawful conduct being challenged. They can't do that in this case.

So there's case law here as well, Your Honor, I'm going to briefly just show it to you, the, *In re Asbestos School Litigation* case. I will talk about that further in a minute. The joining organization, making contributions to them and attending their meetings aren't the activity -- specifically, the activities that are protected by the First Amendment. The Patterson case says that any governmental activity curtailing the freedom of association should get the subject to the closest scrutiny.

And then there's another NAACP case, the Claiborne Hardware case, it says, that you have to have the specific intent to further the challenge or the illegal aim.

So without the specific intent, the First Amendment bars the introduction of this evidence, Your Honor. So specifically the, *In re School* -- excuse me, *Asbestos School Litigation* case, the defendants there, those were former

asbestos manufacturers who were members of an organization that allegedly disseminated misleading information about the dangerous of asbestos in schools, and the 3d Circuit held that those defendants donate money, attending organ -- set meetings of the organization provided no evidence that those defendants specifically intended to further such wrongful conduct.

In plaintiff's papers, Your Honor, they attempt to distinguish that case by stating that the harm the plaintiff sought to hold the defendant liable for occurred before the organization was formed. But the 3d Circuit expressly concluded that even if plaintiffs sought to recover from the cause after the groups creation, and even if it is assumed for the sake of argument that the record is sufficient to show that some of the groups activities were unlawful and not entitled to First Amendment protection, the defendants could still not be held liable because membership contributions and meeting attendance could not, as a matter of law, establish that the defendant specifically intended to advance the unlawful conduct, so there was no specific intent shown.

Plaintiff's papers also admit that joining the organization, making donations is a protected activity, but it seems to suggest that we should -- we should go ahead and admit the evidence anyway. If it's a protected activity where no liability could attach to it, then it's not admissible evidence. It's not relevant to the case, Your Honor. You've

already heard arguments about -- the misleading speech argument where they cited case -- they cited cases on that. We're not making a misleading commercial speech argument. So, here, plaintiff does rely on the conduct of the organizations without showing Janssen or Johnson & Johnson contributed to any specific conduct. It's protected by the First Amendments right to associate.

What I heard Mr. Beckworth say earlier with that document that was just taken down, the document he loves, this one he loves, every document he just loves -- one of the documents Mr. Beckworth loves. But that one is that that was a Purdue created organization, J&J's go-to partner and J&J funded it. J&J attended the meetings, but unless they can show specific activities that J&J -- and specific intent, it's not enough. First Amendment protects that right to associate, Your Honor.

Two organizations, you've already heard some about them today, the AAPM and the APS. Just again, donations and attendance is not enough. They have to show specific intent. In the papers, they say they want to hold Johnson & Johnson liable for the use of these groups. You can't do that. You have to have a specific intent to further the statements.

We've learned about "Responsible Opioid Prescribing." They say, well, the author of that document was a consultant to Johnson & Johnson and -- and so they can make

contributions to them and then there's an organization that Johnson & Johnson contributed to that also funded the book. Again, no proof that Johnson & Johnson intended to further any statement in that book and without specific statements, it's protected by the First Amendment. So in summary, you must show the specific intent to further the particular conduct, otherwise, it's a violation of Johnson & Johnson's right to associate.

We would ask you exclude the evidence.

THE COURT: Thank you, Ms. Fisher.

MS. FISHER: Thank you.

MR. BECKWORTH: I think we can do this one pretty quickly. Kind of talk about some other -- Your Honor, that is one of my favorite documents. The fun thing about this case is I have a lot more.

The whole concept here, again, is, we're not trying to say that associating with someone else clearly leads to liability. If you have membership in the Pain Care Forum, you can associate with trade groups if that's what they are. You can associate with other people, you're free to do that, if that's what you're doing. That's not what we're talking about in the context of this case.

What Ms. Fisher just said in some of the cases she quotes, said, we have to show that they intended to further the specific statements they challenge and we have no evidence of

that. Let me -- let, me give you just a very simple example of how this works in context of this case. Another favorite document that I have yet to show.

The Pain Care Forum membership worked for a long time to get something put into Obamacare that would require the Institute of Medicine, the IOM, to put out a report on pain in America. Okay? So let's just stop there for a second because this goes back to the other issue as well. Is it improper to merely lobby to get a statute that requires a report to be done? I think, in and of itself, no, but here is why all of this fits together and why I think you have to wait until the end to see what is and what isn't a permissible method of establishing liability.

Once that happened, the Institute of Medicine had an advisory committee. The majority of that committee -- Dr. Kolodny will talk about this, it's no surprise to anyone -- the majority of that committee had received funding from different pharmaceutical companies. They issue a report. Now, the report is not all bad, but there are things in there that are false. Like the number of people that have pain, and America has chronic pain.

Now put that over on the side. And IOM put out a report that told Congress to -- should people that receive funding from the opioid industry and pharmaceutical company be involved? Maybe not for me to say, but just troublesome. So

put it in the bucket. While that's going on, there's a lady name Maya Christopher who is at the Center for Bioethics. She is a long-term old friend of the industry and a Pain Care Forum member. She decided that she's going to create something called PAINS, P-A-I-N-S.

And what PAINS is, an amalgamation of different members of the Pain Care Forum and she decides to put them together. And I think we've talked about this at one point in a hearing with you or Judge Hetherington. And in that effort, she wrote kind of a mission statement or mandate; and what she said before it ever came out is, we're going to take the IOM report and we're going to use it to exert pressure and influence on legislators and others to spread the message, to get done what we want to get done, I'm paraphrasing there, but it's "very troublesome" what's said. Okay? So you take that. Now we've got the work of PAINS, an amalgamated group, a Pain Care Forum users where you all are part of the receive funding from one or more of the members of the Pain Care Forum. Now they have this PAINS document.

Then you go into, for example, J&J. J&J's issue, they've got advocacy documents, question their witnesses on it, there's plenty of marketing documents on there. And within that, they talk about who are our go-to advocacy partners or advocacy partners, and they even tier them one, two, who is more important and who is less important on which issues.

Literally part of their marketing campaign for Nucynta was to use PAINS and the IOM to then go out and tell people, doctors, legislators, patients, the media, that the real epidemic in America wasn't the opioid crisis, but that of untreated pain, and that opioids ought to be used to treat that pain. Now, am I just saying this stuff? We'll see at trial. I bet you I have a document that will show you exactly what I just said. So why did I go and lay out that one example? Because it shows why it's inappropriate at the motion in limine stage. What I think your burden will be, after I hopefully have met mine, is to look at all the evidence, just like I laid out but in the context of a trial, and determine whether any, all, or none of what I just told you is something that liability can attach to under whatever law is at issue; freedom of association, freedom to petition, First Amendment. Just like the speech that defendants engage in, doesn't rise to the level of non-protected commercial speech.

At the end of this year, you're going to be charged with making findings and you'll have to determine whether, I used the term res -- I went to law school so I want to use the right words here. But if you look at it all, you can decide what is and is not something that liability can attach to.

So I took a little longer than you may have liked, but that's just one example of how this all works in this case. And you can't just say, oh, we cannot talk about, even talk

about the work we do with a group or lobbyist or anything else. You have to talk about it to put it in context to know how it works in the framework of the law. Thank you.

THE COURT: Thank you, Mr. Beckworth.

MS. FISHER: Briefly, Your Honor, even assuming everything Mr. Beckworth said is accurate and true and I assume it is, it's still protected under the First Amendment. He didn't say anything other than what I told you is protected. Thank you.

THE COURT: In regards to Janssen's motion in limine No. 2 and the motion in limine No. 3, I'm going to overrule both of those. I believe they're premature. I am going to allow for the State to introduce evidence of lobbying and advocacy and certainly I invite the defendants to renew objections. I will give it the weight that it's due based on the evidence. There may not be any weight if I'm convinced of the defendant's position after the evidence has been developed further at trial. Okay.

MS. FISHER: Thank you, Your Honor.

MR. BARTLE: Your Honor, you also denied Teva's motion No. 10 as it relates --

THE COURT: Yes. Thank you for that clarification. I was looking for my notes. And yes, same ruling denying Teva's motion No. 10.

Let's go to Teva's motion in limine No. 4.

MR. MERKLEY: Thank you, Judge.

THE COURT: Thank you.

MR. MERKLEY: Unless I think I'm out of order, I think our motion before relates to Purdue evidence.

THE COURT: Yes.

MR. MERKLEY: It's a pretty simple argument there, Your Honor. Purdue is gone. Purdue settled. Purdue is out of the case, but the State has made it very clear that it intends to use evidence of Purdue's activity in an attempt to establish liability on behalf of the remaining defendants.

I haven't kept an accurate count, but I'm almost certain that Mr. Beckworth has said the word Purdue in all of his evidentiary discussions and on all of these boards more today than he has said the word Teva, who is a remaining defendant. One example was the Purdue and the EPS example he just gave.

Judge, our position is pretty simple. Purdue, at this point, is no longer relevant to this case. The test is whether the remaining defendants, and it will be established at trial, whether the remaining defendants created a public nuisance. It's not whether Purdue created a public nuisance. The State argues that Purdue is still relevant because of some alleged conspiracy, but conspiracy is not an element of public nuisance.

In the case law, and this is pretty clear, as you've

seen in pages 4 and 5 on our brief, Your Honor, the only evidence that provides legal relevance in this cause of action before the Court is relevant under the law. Now the specific cause of action before the Court is public nuisance and the cause of action alleged against Teva, defendants, and J&J defendants, not Purdue. Purdue is gone. So that what's legally relevant to the Court. What's relevant now is based on the facts, materials and the specific cause of action in the case. (Indistinguishable). Collateral facts are irrelevant and should also be excluded. That's in the evidence of Purdue. Remote and collateral facts from which no fair or reasonable inference can be drawn are to be excluded. Again, evidence related to Purdue's action cannot lead to any reasonable presumption or inference involving the Teva and Actavis defendants or even the J&J defendants in this case, particularly that you can certainly not lead to any inference that they committed some sort of unlawful act that would give rise to liability under our public nuisance statute. Conspiracy is not an issue and Purdue is no longer in this case.

It would also be unfairly prejudicial to admit this evidence, Your Honor. Any small probative value the State can argue about being able to tell it -- its story and don't restrict us from telling our story about how all of this came about, that's far outweighed by the potential for undue

prejud -- potential prejudice. You'll see from, and it's been clear from the evidence that what the State seeks to do is use e-mails between members of the Sackler family, internal Purdue sales-force training materials, Purdue marketing documents, Purdue e-mails to third-party public relations groups, marketing companies, all of these Purdue documents dating back to 1996 before Teva had any -- Teva had entered into the opioid pharmaceutical market. Those documents relate solely to internal discussions and decisions by Purdue and cannot be used or shown -- not be shown to have influenced the Teva entity.

And then building upon the inflammatory comments earlier, that they could, therefore, utilize those documents in an inflammatory manner in an attempt to show somehow Purdue's actions were so inflammatory and because Teva talked to them, they should be held liable as well. And those statements just -- just -- for purposes to inflame and detract from the State's burden to show each individual remaining defendant is liable for causing some sort of public nuisance.

I don't want to -- I know I've repeated this several times but I don't want the Court to lose sight of the fact that the bench trial does not change the fact, did not carry the prejudice because the national TV audience could be watching it and this is putting potential jurors in other cases -- and potential jurors in other cases that will make a determination on Purdue where Purdue is still present.

So we ask the Court to exclude all of the evidence that's listed on page 7 and 8 of the motion. That evidence will not tend to prove or disprove any material fact at issue involving the Teva or Actavis, defendants, and it would confuse the record and unfairly prejudice the remaining defendants. It, accordingly, should be excluded.

THE COURT: Thank you, Mr. Merkley.

Mr. Beckworth?

MR. BECKWORTH: Yes, Your Honor. I will do this pretty quickly. I think you pretty much already ruled on this in Teva's first motion in limine, general one, general in limine one. It talked about conduct of other defendants, I thought, or other -- I don't know if you used the word defendants or other.

MR. MERKLEY: I think you referred to co-conspirators.

MR. BECKWORTH: Yes. So you said that was allowed; but the same argument I had there about admissibility, at least, with respect to hearsay depositions and all of that would -- we would readopt.

Going back to this comment that we talked about Purdue more than Teva, not true. We talked about Purdue and Teva quite a bit. But using, again, the Teva-Purdue relationship, one of the things that Teva testified to was that when you make a generic drug, you ride the wake of the work of

others. Here, what we will show is that Teva, along with everyone else, created the wave through its unranked marketing and, therefore, made the way for generic drugs, as well as their own drugs, like, Actiq, to be sold and more of it to be sold.

But also that, with respect to Purdue, Teva went out and tried to steal its patent, ultimately lost that on appeal and because they wanted to keep selling OxyContin, a drug that Purdue was marketing and an opioid that falls within what the unbranded marketing was by Teva, they cut a deal with Purdue.

Purdue was selling it; Teva was paying royalties. Purdue's sales reps were getting paid comp based on Teva drugs. I can't imagine how that's not relevant.

Also in an indivisible injury case like this, we're going to have to talk about the work that they all did in collaboration and some of it with one another. It's still an indivisible injury. I don't want to belabor the point. There's a lot more evidence.

One the thing I had thought of through this whole outside jury argument, you know, don't buy it but there's an easy cure for it. And if -- if any of these folks, some of them probably will in a trial down the road, they can ask a juror, did you see the Oklahoma trial or anything about it? If the answer is no, no problem; if the answer is yes, then they have things, they can say things, like, were you influenced by

it? Yes, I was.

Despite being influenced, will you follow the instruction of a judge to only follow the law in this case and render a verdict based on the law and facts in this case?

If they say no, I can't. I'm pretty sure the Judge is going to strike them. So whatever may happen in a hypothetical trial somewhere else, somewhere down the road, if any of them come, they have plenty of remedies from it. It can be in the questionnaire. Not our problem today.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Beckworth.

MR. OTTAWAY: Do you want me to do No. 7 now, which is the core to what we just heard?

THE COURT: I think that would be a great idea, Mr. Ottaway.

MR. OTTAWAY: Your Honor, we --

MR. MERKLEY: I just have three comments in response.

THE COURT: Yeah, and then we'll hear from Mr. Ottaway.

MR. OTTAWAY: It was a mediocre idea.

MR. MERKLEY: Conspiracy is not an element of the case. Mr. Beckworth's comments about Teva creating a wave or riding a wave -- if Mr. Beckworth has evidence he wants to show the Court about Teva creating a wave or riding a wave or doing

whatever it is he's alleging Teva did, he can give you that evidence. That's why we're here today. We're here to tell you he needs to focus on what Teva did, what -- and did not do. Not what Purdue did. Evidence of what Purdue did to create identity a wave or ride a wave is totally irrelevant.

THE COURT: Thank you, Mr. Merkley.

Now Mr. Ottaway.

MR. OTTAWAY: Thank you, Your Honor. First, we agree with Nick completely. We also took it one step further.

As I told you, as we get closer to trial, the details become more and more important, like, the allegations are. There's no question that the State has blamed Purdue for the opioid crisis. It's all over their petition, but it's also been argued in hearings. Purdue's fraudulent marketing scheme created the opioid epidemic. That's one of their briefs in response to the filing. Purdue let the lion out of the cage, in an aggressive, concentrated and targeted way. That was a hearing on August 30th, just this last year. But Purdue is no longer a party. It has settled out of this case and, therefore, by force of logic, its liability cannot establish liability on Johnson & Johnson.

Relevant evidence is that which tends to prove a fact important in a case; and the issue here is Janssen and J&J's conduct, not Purdue's conduct. The evidence of Purdue's conduct is irrelevant to proving whether Janssen committed an

unlawful act or performed an act required by 50 O.S. Section 1 (indistinguishable). They say the evidence is relevant to the opioid crisis but relevance and admissibility are two different things. The question in this case is not is Purdue liable? The question in this case is: Is Janssen at all liable?

Purdue evidence, they argue, may be admitted for some other purpose. That's why I filed this motion the way I did. If the Court rules for some reason that some evidence about Purdue is going to come in, it should be clear that that evidence cannot establish liability on Johnson & Johnson because it has nothing to do with it.

THE COURT: Thank you, Mr. Ottaway.

Mr. Beckworth, do you want to respond to that?

MR. BECKWORTH: Yes, Your Honor.

I can do that pretty quickly, too.

Yes, we have to establish an independent liability. But it's a joint and several liability case, so we have to establish an indivisible injury. We have to show that an unreasonable interference with the public right occurred. We'll be able to do that, I believe, with respect to the defendants that remain in the case. But you can't separate out some of Purdue's conduct. For example, J&J and Purdue worked together with the drug called Ultram. They worked together on a Pain Care Forum, funneled the same advocacy groups. It's amazing and we'll talk about it here a little later.

Purdue had a company called Partners Against Pain and J&J used almost the exact same language to refer to their advocacy groups. I questioned a witness about that. There's so much overlap. It's like I've said many times, they were competitors, but played in the same league and they had to play on a field which they all did quite nicely.

On top of all of that, you have things like KOLs. You will see at trial that we'll show, like Purdue, map of KOLs. And we'll get to show from that map who they used, who they referred to, Teva, J&J, whatever it is. There's so much overlap and people. Then you add to the fact that when you have 395,000 calls upon doctors, essentially, you have to show how it all worked because you wouldn't have Purdue, perhaps, going in and then J&J going in and Cephalon coming in behind it all on the same doctor, all trying to get market of the opioids that they said were okay, to say now, here is our opioids.

I don't think it's possible to tell the story of what each defendant did without telling part of the Purdue story. Mr. Ottaway is right. We did say that Purdue caused the opioids crisis here. We also said his client did it and Mr. Merkley's client did it too. I would submit that Purdue was smart. They settled. They capped their liability in this case and they are no longer a contribution target for these two defendants. They chose to go to trial and prevail, which will be up to you. They can then go and seek contribution for one

another or anyone else they think they can prove liability to. But the story of Purdue doesn't go away just because Purdue paid what it could pay. Thank you.

MR. OTTAWAY: Your Honor, that's why I filed my motion the way I did. I think I didn't hear anything that indicated they believed that Purdue's conduct for Johnson & Johnson, so my motion should be sustained.

MR. BECKWORTH: I disagree with that.

THE COURT: As to the Teva motion No. 4 and Janssen motion No. 7, I -- because I find that evidence is still admissible and relevant, I am denying the motions. Okay?

Let's take up Teva defendants motion in limine No. 5.

Mr. McCampbell, go ahead.

MR. MCCAMPBELL: Thank you, Your Honor. This motion addresses the plaintiff's attempt to improperly use Cephalon's previous federal conviction against Cephalon.

As the Court will recall, Cephalon pled guilty to an off-labeled marketing charge, that, for ten months during 2001, for a ten-month period, Cephalon was off-label marketing for three drugs, one of which was Actiq, which is one at issue in this case. That evidence is inadmissible and reference to it should be excluded. There's two big points I would like to make with the Court.

The first is that the plaintiff wants to use this as

character evidence, which is prohibited by Section 2404(b).

If I could approach the bench, Your Honor?

THE COURT: Yes, you may.

MR. MCCAMPBELL: 2404(b) clearly provides that you can't use evidence of a crime or -- or other wrong, to try to prove that the defendant acted in conformity therewith on another occasion.

And that's exactly what the plaintiffs want to do. They have consistently talked about the fact that Cephalon has this criminal conviction, therefore, they must be liable for all of this.

You've heard that several times in here today. Well, that kind of argument, that kind of inference is exactly what 2404(b) is designed to prevent.

The other argument that plaintiffs make is, well, this is substantive evidence of liability because of those actions during those ten months in 2001. And it's not. And the reason it's not is because off-label marketing is different from the allegations in this case. In this case, the plaintiffs have said over and over and over that they believe the defendants have been untruthful with respect to the risks of opioids and that they've been untruthful in overstating the benefits of opioids.

Off-label marketing is different. There is no requirement of showing any untruthful conduct in an off-label

marketing case and there was no finding of untruthful conduct by Cephalon in the -- in that off-label marketing case. So off-label marketing, very specific animal.

The FDA, as the Courts heard over and over, the FDA makes those labels, has all the details, including the indicated-uses for that drug. And the manufacture can only promote the drug for those uses that have been approved by the FDA.

Now, there are other uses. I had a case -- had a case a few years ago. It was a liver transplant drug to anti-rejection drug. Doctors would also use it for lung transplants because there wasn't an approved drug for lung transplants. If the doctor chooses to use the drug, that's legal. The company, however, can't promote it for that off-label use. And so what happened is the allegation is the sales reps go out and say, look, here is the study that says this works really well for lung transplants.

Well, even though that's a true statement, and even though that's what the study says, it hasn't been through the FDA procedure. It hasn't been approved for that other use. That's off-label marketing. And the point of all of this is that's different from deceptive conduct. There is no requirement for deceptive conduct in off-label marketing and there was no finding that Cephalon committed any unlawful conduct.

The difference between the two things, off-label marketing on the one hand, and the allegations of this lawsuit were discussed by the plaintiffs in one of their briefs. And it happened like this.

You'll recall one of the motions we filed was a motion for summary judgment, because part of this off-label marketing settlement -- there was a guilty plea in federal court, there was also a nationwide settlement, Oklahoma settled this with Cephalon. We had a settlement agreement including a release. And that was the motion we teed up for the court. The State briefed in opposition and it ended up going away, because when the State dismissed the False Claims Act claims, that released -- then that went away and so the Court didn't have to decide it.

However, we discussed it in the course of that and the State discussed it in the course of that. If I can approach, Your Honor?

THE COURT: Yes.

MR. MCCAMPBELL: And I'm giving the Court a copy of the State's brief in opposition filed on March 18th. I will tell the Court this brief was filed under seal. The parts I wanted to discuss are not confidential and we can discuss it without having to take any particular actions. And the only thing I really want to get out of this, Your Honor, if you turn to page 3.

THE COURT: Three?

MR. MCCAMPBELL: Page 3, Your Honor. And I've underlined the portion there where the State's explaining to the Court that this off-label marketing settlement doesn't apply to this lawsuit.

They say, look, this settlement was only for this narrow claim of off-label promotion and, therefore, they argue the only claims released were off-label promotion.

You go to the next paragraph there, the settlement did not cover Cephalon's conduct in what -- in overstating the benefits and understating the risks of opioids, nor did the settlement agreement cover Cephalon's conduct in working with other defendants, and alleged third parties to carry out the scheme. So the only point I want to make is they're recognizing the same distinction I'm arguing with the Court today. Off-label marketing is different from the State's allegation that we overstated the benefits and understated the risks of opioids.

For that reason, it is not proof of any liability. It is highly prejudicial and unfairly prejudicial and the State's -- the State has shown over and over again what they want to use it for is to try to convince this Court that because Cephalon pled guilty to this off-label marketing claim, they must be guilty of this conduct all the time. That's exactly what 2404 is designed to prevent.

I would ask the Court to exclude that evidence. Thank you.

THE COURT: Thank you, Mr. McCampbell.

Mr. Burrage.

MR. BURRAGE: Thank you, Your Honor. We've briefed this so I'll be brief. The allegation is a campaign of false and misleading and deceptive marketing. 2404(b) does not apply in this case.

In other words, we're using the guilty plea to prove liability. We're not talking about the character to other crimes, so to speak. It's to prove liability and so that exception doesn't apply.

But even if you said it did apply, the exceptions that we pointed out in the brief, promoting plans and so forth, it would fall within that exception. But it also goes to rebut testimony that has been given in this case. We set out on page 9 of our brief about the reps saying that, you know, there were -- didn't have any off-label representations made and that's called Williams and Sarah Dunn, and it shows that that testimony that was given is not true.

And it also shows that the marketing plans that we're talking about in this case, that were covered by the plea agreement ranked the agreement that went through. I think, 2013, it talks about the plan and all the marketing plans for this drug, and it says that they were used in Oklahoma.

And that -- there's two excerpts from the deposition testimony showing that those plans were used in Oklahoma. And when you look at the plea agreement, it specifically says at pages -- paragraphs, 12 through 18 that it's dealing with the company's off-label marketing. That's what we pled in our petition.

So that's why the guilty plea is relevant in this case and it was not released in the release and we've been through that. That was a False Claims Act case, and it only released the False Claims Act allegations. It didn't release the off-label marketing and those other claims that we have set forth. Thank you.

THE COURT: Thank you, Mr. Burrage.

Mr. McCampbell?

MR. MCCAMPBELL: Mr. Burrage began his presentation by telling the Court this was a case concerning a campaign of false, misleading and deceptive marketing. That's what this case is about, also all of those things are different from off-label marketing.

Thank you, Your Honor.

MR. DUCK: Judge, may I address that? There's one point that there's a new answer here.

THE COURT: Sure.

MR. DUCK: And the point is, the fact that Cephalon was off-label marketing a fentanyl product for use in noncancer

pain, the only indication it was proved that it was safe and effective for by its very nature, means that Cephalon was claiming it was safer and more effective than it actually was.

And upon the settlement that Cephalon entered into with the Department of Justice, the press release was issued. I would like to read that press release into the record.

The first page of last paragraph of that press release states:

The FDA approved that the fentanyl product manufactured as a lollipop for use-only in opioid chronic cancer patients. Meaning those patients for whom morphine-based painkillers is no longer effective. The drug is a strong, highly-addictive narcotic with significant potential for abuse.

From 2001 through at least 2006, Cephalon was allegedly promoting the drug to noncancer patients to use for such conditions such as; migraine; sickle-cell pain crises; injuries and anticipation of changing wound dressings for radiation therapy. Cephalon also promoted actively the use to patients who were not opioid tolerant and for whom it could have life-threatening results. Thank you, Judge.

THE COURT: Mr. McCampbell?

MR. MCCAMPBELL: None of that is inconsistent with my argument. That happened. I know the State wants to poke at us for having a conviction, but it was not for deceptive

conduct and it's not properly part of this trial. Thank you.

THE COURT: Okay. As to No. 5, I'm going to grant the motion in limine.

Let's move to Janssen's No. 4.

MR. OTTAWAY: Thank you, Your Honor. Your Honor, can I get clarification on that? Is the ruling that we can't refer to the fact that they pled to it? We can talk about the conduct in the course of the trial?

THE COURT: Well, let's look at the specific request here. They've asked that any reference to the plea --

MR. BECKWORTH: To plea.

THE COURT: -- be excluded.

MR. BECKWORTH: Thank you.

MR. MCCAMPBELL: I'm sorry, Your Honor, our request was to preclude the State from referring to or, otherwise, offering information or evidence in any form regarding the alleged criminal conduct or prior acts, including, but not limited to. So it -- if we exclude the plea, then the underlying conduct is also irrelevant.

MR. BECKWORTH: Your Honor, that's not right. They engaged in a massive campaign to replace dying cancer patients with chronic pain patients and the conduct that is at issue is a major part of this case. The issue of, we're fine if we don't get to refer to them as a criminal. I mean that's public domain. Everybody knows. But the conduct at issue is a major

part of this case.

THE COURT: My ruling is based upon 12 O.S. 2404, which is the statute we often see in criminal cases and it certainly applies to the fact that Cephalon pled guilty to the misdemeanor.

As far as the underlying facts, I am not going to make my ruling that broad so you'll probably have to re-urge that. The defendants will have to re-urge it if they think the State is intruding on that.

MR. BECKWORTH: Thank you, Your Honor.

MR. MCCAMPBELL: Thank you, Your Honor.

THE COURT: Thank you.

MR. OTTAWAY: Thank you, Your Honor. I think this will take us through 2:00, Your Honor. I know Brad wants to get on the way and that's fine with us.

MR. BECKWORTH: Your Honor, we shouldn't stop the hearing because of me. If you want to keep going, I'll deal with what I can deal with.

THE COURT: I think it probably would be a good idea just to stop. Tomorrow is -- we've got significant things. On the back end tomorrow, if we have room, time, we can do the rest or we can bump them to next week.

Is there any objection to that? Let me know if there is.

MR. MCCAMPBELL: No objection.

THE COURT: Let's go ahead with this one. We wouldn't want to deprive you.

MR. OTTAWAY: Judge, this is Janssen's motion in limine No. 4, to exclude evidence regarding the Noramco, Tasmanian Alkaloids. I know you've heard those names before, but we'll go through the same kind of things as the reason we're arguing this. I don't have to repeat it. Your Honor's hearing these motions so the arguments, you shouldn't -- I think I've already gone on.

As a little background, Noramco, which is a subsidiary of Janssen -- was a subsidiary of Janssen in 1979 to 2016, a manufacturer's active pharmaceutical agreement which you've heard through -- to as APIs for opioid prescription medicines. Tasmanian Alkaloids, J&J's subsidiary from 1982 to 2016 produced the raw materials and poppy straw used to make the active pharmaceutical ingredients of themselves. Both did. So under the auspices of the Drug Enforcement Administration they were only able to sell to the customers in the U.S. authorized by the Food & Drug Administration and the DEA.

Oklahoma does not impose liability on component part manufacturers. This is a subject which you've heard before and you heard a little bit of reference to it earlier today.

The Tasmanian Alkaloids contribution to most of what they talk about on the other side of the room here, is growing a poppy which had higher fee gain than regular poppies. And

I'm not an expert on anything that I (indistinguishable) and so will you at the end of this case, but it is a product which is then integrated into the final product which is opioid medications. It's a perfectly lawful activity done under the auspices of the government, the amount imported is controlled through the DEA.

But Oklahoma does not impose liability under proponent drug manufacturer, which is what (indistinguishable) and what Noramco makes out of that fee gain. There's no question in this case that the DEA establishes quotas for the importation of active pharmaceutical ingredients.

We've cited the statute that does that and those quotas are annual and control the purchase or importation of any APIs or opiate medications into the United States. Federal law authorized Noramco, Tasmanian Alkaloids and all the people they sold to to obtain active farm ingredients. It is important to note that neither Noramco or Tasmanian Alkaloids has been charged by the State here and would, in fact, market these products to doctors in Oklahoma. They don't engage in marketing at all.

The State and federal law block liability for federally authorized conduct, and I put some quotes there and where they come from. This is an argument that you have heard before indirectly, but now I'm going to frame it more directly. If the allegation in this case is that liability can be imposed

upon Janssen by reason of the lawful and regulated conduct of Tasmanian Alkaloids and growing poppies, because where else are you going to get this stuff, for Noramco, by turning it into an active pharmaceutical ingredient and selling it to groups authorized by the Food & Drug Administration, then you have run directly afoul of this preemption for federally authorized conduct.

Therefore, this evidence is irrelevant as to liability. There's no claim in this case that these companies did anything that influenced doctors in Oklahoma or anywhere else and it should be excluded under the same statute you just cited.

The plaintiffs may argue that, well, this goes to motive because Noramco made money, Tasmanian Alkaloids made money. These are independent subsidiaries. There is no piercing of the corporate veil in this case. There is zero evidence that Noramco had any involvement in or control over how Janssen promoted its drugs or much less how Teva, Cephalon or Purdue promoted or detailed theirs. And letting the State try to introduce this mode of entry is a complete waste of time, because it doesn't have anything to do with the ultimate decision you're going to have to make, which is, did Janssen cause the opioid crisis by overpromoting and underselling both the benefits and risks of its opioids medications?

As a result, the Court should take this issue out of

the case and grant the defendant's motion in limine No. 4.

THE COURT: Thank you, Mr. Ottaway.

Mr. Beckworth?

MR. BECKWORTH: Yes, Your Honor, that last point about it being a tiny part, number one -- one of the interesting things about J&J and Janssen is that they're a pain and pharmaceutical franchise.

MR. OTTAWAY: I didn't use tiny part. I said tiny portion.

MR. BECKWORTH: I said tiny part and you used tiny portion. I'm sorry I used the wrong word. That the pharmaceutical side of J&J is a really big part of this business. I don't think I need to belabor -- I don't intend to belabor this one because we argued it quite extensively with Dr. Kolodny about the relevant testimony of Noramco. If you need a lot of argument, I will -- I will just say this. We've got -- a lot of this case is about unbranded marketing. The idea that you haven't made opioids more available, more desired, more okay to get more prescriptions is a huge part of this case and J&J had every reason to do it in its pain franchise.

And the pain franchise, it's very important. You'll hear that word during trial, the pain franchise includes Noramco. When Noramco talks about itself, it's part of the pain franchise. Noramco supplied J&J as part of its products

for J&J's own drugs, as well as those drugs for third parties like Purdue.

You've seen this document before. This is one that -- if I may approach?

THE COURT: Yes.

MR. BECKWORTH: -- Judge Hetherington said was public now. This is J&J's Noramco talking about itself. And one of the things they say is that their high fee based poppies was transformational in the growth of Oxycodone. Now Oxycodone is a base product of API, active pharmaceutical agreement and OxyContin, which was sold by Purdue and also by Teva, through generic versions.

May I approach again, Your Honor?

THE COURT: Yes.

MR. BECKWORTH: This goes back to the whole kind of -- why do we talk about Purdue. I won't say this is one of my favorite --

MS. FISHER: Everyone is your favorite. Just like your children, you love them equally.

MR. BECKWORTH: Oxycodone consumption, why does it matter? So this isn't about death. We'll get to that. It's not about ER visits and all of the problems. It's about consumption, it's about motive. With unbranded marketing and branded marketing, the desire, the need, the appetite for these drugs skyrocketed. With that, when you create a need, you get

to do something... supply that need. And here we see that consumption of Oxycodone goes up. We know that one of the main API suppliers of Oxycodone was Noramco.

So clearly, that evidence is relevant to this case. It's relevant to why they did what they did, it's relevant to how they helped this crisis occur. We'll have some evidence and you'll see that Purdue, we'll talk about how the greatest barrier to produce expansion was the ability to get product. You'll see the other side of that with Noramco saying, we're going to supply you that product.

Throughout the course of all of this, while Purdue is engaging in improper conduct, J&J is right there alongside them, doing the same kind of thing on its direct-sale side, doing the same kind of thing on the unbranded marketing and supplying it's partner at the table with the product to supply this consumption demand. I can't see how it wouldn't be relevant. Thank you.

THE COURT: Thank you, Mr. Beckworth.

Mr. Ottaway?

MR. OTTAWAY: Thank you, Your Honor. We're arguing the same point here.

The State's case is that Janssen oversold the benefits and undersold the risk of its opioid products. Noramco and Tasmanian Alkaloids didn't do any of that. They did supply the active pharmaceutical ingredient from which all

opioids can be made and that cannot be a basis of liability here. That's not what the State claims that Janssen and Johnson & Johnson did wrong. It's not what the State has alleged throughout this entire case.

All we did with these two companies is engage in completely lawful conduct under the control of two federal agencies that has nothing to do with the allegations in this courtroom and that evidence should be excluded, it's irrelevant to the State's case.

If Janssen did something wrong in marketing these drugs, that's Janssen's liability, but it can't be based on the fact that Noramco and Tasmanian Alkaloids provided the active pharmaceutical ingredient for it.

THE COURT: The previous rulings by Judge Hetherington, myself, both recognize that a connection of Noramco, Tasmanian Alkaloids to Janssen or Johnson & Johnson, I believe that they are relevant and they survived the defendant's challenge and, therefore, I'm going to deny the motion in limine No. 4 in this matter.

As I stated before, I think we ought to stop there today. I show the remaining Janssen motions 5, 6, 8, 9, 10, 11, 12, 13, 14 and Teva 6, 7, 8 and 9.

Is that -- are we all on the same page?

MR. WHITTEN: Can you say Janssen again?

THE COURT: The ones that remain are 5 and 6, 8, 9,

10, 11, 12, 13 and 14. Although, I think --

MS. FISHER: You did 12.

THE COURT: -- 12. We did 12 already. So I'll mark that off.

MR. WHITTEN: Thank you.

THE COURT: As far as tomorrow goes --

MR. MCCAMPBELL: And Teva 6, 7, 8 and 9 are what I have are still outstanding, Your Honor.

THE COURT: 6, 7, 8, and 9, yes.

MR. MCCAMPBELL: Yes, sir.

THE COURT: As far as tomorrow goes, I'll be prepared to listen to arguments on the motions for summary judgment. I shouldn't say this, but I'm not going to limit you to 20 minutes. I might regret saying that. We will begin at 8:15. I know that's tough for you all coming from the City. You know, if something happens where you can't control that, I'm not going to be upset.

The sheriff's been kind enough to let you up here early. If you do get here, I'm not asking, if someone really wants to get here before 8:00, I think they'll be prepared to open the doors for you as early as a quarter till.

Again, don't take that as me telling you to do that, but just let them know you're here for the hearing. I think that's mostly the west door. So if you're going to get here early, I would plan on using the west door which is the door

that is across from the railroad train.

We will break. I need to leave promptly at 12:45. I need to get to Yukon by 1:45 and we'll come back and resume at 3:00. Judge Hetherington is prepared to be here. I can't remember what he said, but you all know.

MR. WHITTEN: What are we arguing on the 14th? I was unclear.

THE COURT: That's the half day.

MR. MERKLEY: I think it's definitely the remaining motions in limine that we won't get to tomorrow.

THE COURT: Definitely the remaining motions in limine.

MS. FISHER: What time on the 14th?

THE COURT: The morning from 9:00 to 12:00. Probably more like 9:00 to 11:00, if we can do it that much. I have to be somewhere.

All right, anything else?

MS. FISHER: Thank you.

MR. MERKLEY: Thank you.

THE COURT: Thank you very much.

(End of proceedings.)

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CERTIFICATE

STATE OF OKLAHOMA)
COUNTY OF CLEVELAND)

I, Tanya Burcham, a Registered Professional Reporter within and for the State of Oklahoma, do hereby certify that I was present at the proceedings had May 9, 2019; that I recorded in stenotype notes all of said proceedings, that I thereafter transcribed my notes so taken and reduced same to typewritten form, and that the foregoing Transcript of Proceeding is full, true, correct and complete, to the best of my skill and ability.

I further certify that I am not an attorney for nor relative of any of said parties or otherwise interested in the outcome or event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 11th day of May, 2019.

_____
Tanya Burcham, CSR, RPR